

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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United States Court of Appeals for the District of Columbia

APRIL TERM, 1935

No. 6532 **766**

JOHN A. REILLY, TRUSTEE IN BANKRUPTCY OF
H. R. HOWENSTEIN COMPANY, APPELLANT,

vs.

ANNA S. SABIN, J. BARRETT CARTER, H. R. HOW-
ENSTEIN CO., AND LEO N. McGUIRE, TRUSTEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 9, 1935.

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United States Court of Appeals for the District of Columbia

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JOHN A. REILLY, TRUSTEE IN BANKRUPTCY OF
H. R. HOWENSTEIN COMPANY, APPELLANT,

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ANNA S. SABIN, J. BARRETT CARTER, H. R. HOW-
ENSTEIN CO., AND LEO N. McGUIRE, TRUSTEE,
APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original	Print
Caption	.a	1
Petition in bankruptcy	1	1
Order of adjudication	4	3
Schedules	5	4
Order approving bond of trustee	30	30
Bond of trustee	31	30
Order authorizing trustee to employ counsel	32	31
Petition of trustee for leave to sell, &c.	33	32
Exhibit "A"	38	35
Motion to sell real property	42	38
Motion for injunction	44	38
Answer to rule and motion on petition of trustee to sell....	46	39
Answer of J. Barrett Carter	51	43
Supplement to petition of trustee for leave to sell, &c.	53	44
Sales contract	55	45
Memorandum Opinion of Luhring, J.	56	47
Order denying petition of trustee for leave to sell	58	48

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 19, 1935.

	Original	Print
Order denying injunction	59	49
Exception of trustee to order denying motion to restrain...	60	49
Assignments of error	62	50
Notice of appeal from order denying injunction, &c.	64	51
Petition for appeal	65	52
Order of Cox, J., allowing appeal	66	52
Exception of trustee to order denying motion to sell	67	53
Assignment of errors on order denying motion to sell, &c...	69	53
Notice of appeal from order denying leave to sell	70	54
Petition for appeal	71	55
Order of Cox, J., allowing appeal	72	55
Appeal from order denying petition to restrain	73	56
Appeal from order denying motion to sell	74	56
Motion to dismiss petitions for appeal	75	57
Order noting appeal	76	58
Citation on appeal	77	58
Order of Court of Appeals allowing appeal under Section 24-b of Bankruptcy Act	78	59
Designation of record	79	60
Further designation of record	81	62

(Equity 57936.)

Judgment creditor's bill in Equity No. 57936	82	62
Intervening petition of J. Barrett Carter	100	75
Separate answer of Second National Bank	106	80
Separate answer of American Security & Trust Company..	112	84
Separate answer of Herman R. Howenstein	118	87
Exhibit "A"	132	96
Exhibit "B"	134	96
Separate answer of H. R. Howenstein Company	136	96
Separate answer of Katherine M. Howenstein	145	101
Separate answer of E. Catesby Rowzee	152	105
Answer of Riggs National Bank	163	112
Motion for a receiver	167	115
Affidavit of Ralph L. Sabin	168	115
Memorandum of Court	172	118
Order overruling motion for appointment of receiver	177	122

(Bkey. 3184.)

Petition and motion to vacate order of adjudication, &c. ..	178	123
Motion to revoke, vacate and set aside order of adjudication	185	129
Answer of John A. Reilly to petition to vacate	187	130
Answer of H. R. Howenstein Co. to petition to vacate	191	133
Counter designation of record	202	139
Clerk's certificate	204	140

United States Court of Appeals for the District of Columbia

No. 6532.

JOHN A. REILLY, Trustee in Bankruptcy of H. R. Howenstein Company, Appellant,

vs.

ANNA S. SABIN, J. BARRETT CARTER, H. R. HOWENSTEIN Co.,
and LEO N. MCGUIRE, Trustee.

a Supreme Court of the District of Columbia.

Bankruptcy. No. 3184.

In re H. R. HOWENSTEIN COMPANY, a Corporation,
Bankrupt.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 [Stamp:] Filed Feb. 28, 1935. Frank E. Cunningham, Clerk.

In the Supreme Court of the District of Columbia, Holding
a Court of Bankruptcy.

Bankruptcy. No. 3184.

In re H. R. HOWENSTEIN COMPANY, a Corporation, Bankrupt.

The petition of H. R. Howenstein Company, a corporation, respectfully represents:

1. That it is a corporation duly created, organized and existing under and by virtue of the laws of the District of Columbia, and is not a municipal, railroad, insurance or banking corporation; that it has had its principal place of business for the greater portion of six months next immediately preceding the filing of this petition at 1315 H Street, Northwest, in the City of Washington, District of Columbia.

2. That it owes debts, which it is unable to pay in full.

3. That it is willing to surrender all of its property for the benefit of its creditors and desires to obtain the benefit of the Acts of Congress relating to bankruptcy.

4. That at a meeting of the Board of Directors of your petitioner duly called and held on the 19th day of February, 1935, the following preamble and resolution were duly and unanimously adopted:

2 Whereas, this corporation, H. R. Howenstein Company, is unable to pay its debts.

Resolved, that this corporation petition the Supreme Court of the District of Columbia sitting as a Court of Bankruptcy for its adjudication as a bankrupt and that E. Catesby Rowzee, its President, be and he is hereby authorized and directed to make, verify and file all such petitions, schedules and other papers as may be requisite or necessary to procure such adjudication and to retain the firm of Tobriner, Graham, Brez & Tobriner as attorneys for that purpose.

Wherefore, your petitioner prays:

1. That it may be adjudged a bankrupt within the purview of the Acts of Congress.

H. R. HOWENSTEIN COMPANY,
By E. CATESBY ROWZEE,
President.

TOBRINER, GRAHAM, BREZ &
TOBRINER,
By SELIG C. BREZ,
Attorneys for Petitioner,
Suite 932, Southern Building,
Washington, D. C.

3 DISTRICT OF COLUMBIA, *To wit:*

I, E. Catesby Rowzee, being first duly sworn, on my oath do depose and say that I am the President of the H. R.

Howenstein Company, the petitioning debtor mentioned and described in the foregoing petition, and do hereby make sodemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

E. CATESBY ROWZEE.

Subscribed and sworn to before me this 23rd day of February, A. D. 1935.

[NOTARIAL SEAL.]

BELLE FOUCAULT,
*Notary Public in and for the
District of Columbia.*

Com. exp. 10/1/39.

4 *Order of Adjudication of Bankruptcy.*

Upon consideration of the petition of H. R. Howenstein Company, filed herein the 23rd day of February, 1935, that it be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, it is this twenty-third day of February, A. D. 1935, declared that said H. R. Howenstein Company, a corporation, be adjudged bankrupt.

Accordingly, therefore, it is ordered that said matter be and hereby is referred to Fred J. Eden, Referee in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said H. R. Howenstein Company, a corporation, through its officers, agents and employees, shall attend before said Referee at his office in the City of Washington on a day to be fixed by said Referee and thenceforth shall submit to such order as may be made by said Referee or by this Court relating to bankruptcy.

JENNINGS BAILEY,
Justice.

5 Filed Mar. 2, 1935. Frank E. Cunningham, Clerk.

Official Bankruptcy Form.

Schedule A—Statement of All Debts of Bankrupt.

Schedule A-1.

Statement of All Creditors Who Are to Be Paid in Full, or to Whom Priority is Secured by Law.

	Amount.
1. Taxes and debts due and owing to the United States:.....	None.
2. Taxes due and owing to the District of Columbia or to any county, district or municipality thereof: Estimated real estate taxes owing on various parcels of real estate shown on Schedule B-1, 58 houses and 19 unimproved lots, average \$100.00 each.....	\$7,700.00
3. Wages due workmen, clerks, or servants, to an amount not exceeding \$600 each earned within three months before filing the petition:.....	None.
4. Other debts having priority by law:.....	None.
Total.....	\$7,700.00

H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE,
Petitioner.

These schedules must be executed in triplicate.

Schedule A-2.

Creditors Holding Securities.

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by Acts of Congress relating to bankruptcy and whether contracted as partner or joint contractor with any other person, and if so, with whom.]

This schedule includes liens, pledges, mortgages, notes, etc.

Reference to ledger or voucher.	Names of creditors.	Residences. (If un- known, that fact must be stated.)	Description of securities.	When and where debts were con- tracted.	Face value of securities.	Amount of debts.
Notes Payable	Federal American Na- tional Bank & Trust Company	1342 New York Ave- nue, N. W.	Note of Maud Ander- son and note of Ellen Rodda	Washington, D. C.	\$4,186.01	\$9,913.64
"	American Security & Trust Company	7th & Massachusetts Avenue	Note of David Robertson	"	116.89	650.00
"	City Bank	7th & K Sts., N. W.	Note of Chas. Clark and note of A. B. Clemmer	"	6,754.12	600.00
"	Lincoln National Bank	7th & D Sts., N. W.	Notes of Edw. W. Ancrum, Edw. O. Peterson, Blackistone, C. C. Grimes, F. L. Scott and Jesse L. Haney	"	30,037.39	13,352.50

Note: These are second trust notes, more fully described in Schedule B-2.

Note: List of creditors holding notes made by debtor corporation and secured on its property begins on next page.

Total.....	\$41,094.41	\$24,516.14
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H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE, Pres.,
Petitioner.

Schedule A-2—Continued.

Names of creditors. Residences. (If unknown, that fact must be stated.) When and where debts were contracted. Value of securities. Amount of debts.

The following are holders of notes made by the bankrupt corporation and are secured by first or second deeds of trust on the various parcels of real estate owned by bankrupt and listed on Schedule B-1 hereof. (It is believed that the real estate is sufficient security for said notes.)

Est. J. F. Shea, 643 Ind. Av., N. W.	765 Princeton St., N. W.	Washington, D. C.	\$4,750.00	\$4,750.00
Est. J. F. Shea, 643 Ind. Av., N. W.	605 Otis Pl., N. W.	"	3,750.00	3,750.00
Wash. Loan & Tr. Co., 9th & F Sts., N. W.	605 Otis Pl., N. W.	"	268.36	268.36
Oak Hill Ceme. Co., 30th & R Sts., N. W.	2439 Tunlaw Rd., N. W.	"	4,500.00	4,500.00
Smoot Sand & Gravel Co., 3020 K St., N. W.	1315 H St., N. W.	"	75,000.00	75,000.00
W. F. Brice, Southern Bldg.	1315 H St., N. W.	"	6,981.88	6,981.88
Wash. Loan & Tr. Co., 9th & F Sts., N. W.	1201 13th St., N. W.	"	138,750.00	138,750.00
R. L. Sabin et al., Southern Bldg.	1201 13th St., N. W.	"	28,700.00	28,700.00
W. F. Clark, 417 4th St., N. W.	304 T St., N. E.	"	4,500.00	4,500.00
W. B. Putnam, 2955 Carlton Av., N. E.	304 T St., N. E.	"	1,386.18	1,386.18
Nana A. Kervin et al., 329 10th St., N. E.	306 T St., N. E.	"	4,500.00	4,500.00
R. E. P. Kreiter, 815 15th St., N. W.	306 T St., N. E.	"	1,760.10	1,760.10
C. S. Jones et al., 623 7th St., N. E.	308 T St., N. E.	"	4,500.00	4,500.00
Mary Underwood et al., 2115 P St., N. W.	310 T St., N. E.	"	4,500.00	4,500.00
W. F. Brice, Southern Bldg.	310 T St., N. E.	"	302.97	302.97
Wash. College Law et al., 2000 G St., N. W.	312 T St., N. E.	"	4,500.00	4,500.00
Sara E. Berens, 17575 Stoepele Av., Detroit, Mich.	312 T St., N. E.	"	1,130.75	1,130.75
Millie C. Vickeny, c/o R. L. Sabin.	316 T St., N. E.	"	4,500.00	4,500.00
Millie C. Vickeny, c/o R. L. Sabin.	318 T St., N. E.	"	4,500.00	4,500.00
May R. Springmann, 635 Md. Av., S. W.	318 T St., N. E.	"	1,082.56	1,082.56
Millie C. Vickeny, c/o R. L. Sabin.	320 T St., N. E.	"	4,500.00	4,500.00
W. F. Brice, Southern Bldg.	320 T St., N. E.	"	1,341.17	1,341.17
W. F. Clark et al., 417 4th St., N. W.	322 T St., N. E.	"	4,500.00	4,500.00
Gertrude A. Wise, 17575 Stoepele Av., Detroit, Mich.	322 T St., N. E.	"	1,905.20	1,905.20
Oak Hill Cemetery, 30th & R Sts., N. W.	303 Todd St., N. E.	"	4,250.00	4,250.00
Oak Hill Cemetery, 30th & R Sts., N. W.	305 Todd St., N. E.	"	4,250.00	4,250.00
C. S. Jones et al., 623 7th St., N. E.	309 Todd St., N. E.	"	4,500.00	4,500.00
Nana A. Kervin, 329 10th St., N. E.	311 Todd St., N. E.	"	4,500.00	4,500.00
Ida R. Hamaker, Annapolis Hotel.	311 Todd St., N. E.	"	2,002.69	2,002.69
Ellen S. Mussey et al., 1900 R St., N. W.	313 Todd St., N. E.	"	4,500.00	4,500.00

Eliz. M. Murphy, c/o W. F. Brice, Southern Bldg.	313 Todd St., N. E.	617.81	617.81	4,250.00
W. F. Clark et al., 417 4th St., N. W.	315 Todd St., N. E.	4,250.00	4,250.00	4,250.00
Henry S. Matthews, 1418 F St., N. W.	319 Todd St., N. E.	4,250.00	4,250.00	4,250.00
Mary L. Sabin, c/o R. L. Sabin	321 Todd St., N. E.	4,000.00	4,000.00	4,000.00
M. M. Horowitz, 4510 Ga. Av., N. W.	321 Todd St., N. E.	2,638.98	2,638.98	2,638.98
Est. Jas. F. Shea, 643 Ind. Av., N. W.	325 Todd St., N. E.	4,000.00	4,000.00	4,000.00
Gertrude A. Wise, 17575 Stoepele Av., Detroit, Mich.	325 Todd St., N. E.	1,859.39	1,859.39	1,859.39
Carrie B. Allen, c/o R. L. Sabin	314 Todd St., N. E.	4,000.00	4,000.00	4,000.00
Mary L. Sabin, c/o R. L. Sabin	316 Todd St., N. E.	4,000.00	4,000.00	4,000.00
Est. J. F. Shea, 643 Ind. Av., N. W.	318 Todd St., N. E.	4,250.00	4,250.00	4,250.00
Est. J. F. Shea, 643 Ind. Av., N. W.	320 Todd St., N. E.	4,250.00	4,250.00	4,250.00
Est. J. F. Shea, 643 Ind. Av., N. W.	324 Todd St., N. E.	4,250.00	4,250.00	4,250.00
Est. J. F. Shea, 643 Ind. Av., N. W.	1902 4th St., N. E.	7,000.00	7,000.00	7,000.00
W. B. Putman, 2955 Carlton Av., N. E.	1902 4th St., N. E.	665.31	665.31	665.31
Ellen S. Mussey et al., 1900 R St., N. W.	1912 4th St., N. E.	6,000.00	6,000.00	6,000.00
Oak Hill Cemetery, 30th & R Sts., N. W.	3406 15th St., N. E.	5,000.00	5,000.00	5,000.00
Virginia G. Sloan et al., 2737 Devonshire Pl., N. W.	1452 Lawrence St., N. E.	5,000.00	5,000.00	5,000.00
W. H. Kenvin et al., 329 10th St., N. E.	3903 20th St., N. E.	4,500.00	4,500.00	4,500.00
Anna S. Sabin, c/o R. L. Sabin	3021 24th St., N. E.	4,000.00	4,000.00	4,000.00
Frank Owings, Bank Com. & Sav. Bldg.	3021 24th St., N. E.	456.36	456.36	456.36
Helen Lyon, 112 2nd St., N. E.	2831 Myrtle St., N. E.	3,850.00	3,850.00	3,850.00
9				
Sec. Sav. & Com. Bank, 9th & G Sts.	1624 Gales St., N. E.	3,500.00	3,500.00	3,500.00
L. F. Gardner et al., 2737 Devonshire Pl.	1654 Gales St., N. E.	3,500.00	3,500.00	3,500.00
Chas. J. Walker, 1418 F St., N. W.	309 10th St., N. E.	4,500.00	4,500.00	4,500.00
Oak Hill Cemetery, 30th & R Sts., N. W.	1117 7th St., N. E.	4,000.00	4,000.00	4,000.00
Oak Hill Cemetery, 30th & R Sts., N. W.	1218 Owens St., N. E.	4,000.00	4,000.00	4,000.00
L. F. Gardner, 2737 Devonshire Pl.	11 Evarts St., N. E.	4,250.00	4,250.00	4,250.00
B. F. Saul Co., 925 15th St., N. W.	752 19th St., N. E.	3,500.00	3,500.00	3,500.00
May R. Springmann, 635 Md. Ave., S. W.	752 19th St., N. E.	2,050.44	2,050.44	2,050.44
Oak Hill Cemetery, 30th & R Sts., N. W.	2421 Third St., N. E.	4,000.00	4,000.00	4,000.00
Erskine Gordon, Hamilton Bank, 14th & G Sts., N. W.	633 Girard St., N. E.	4,000.00	4,000.00	4,000.00
Eliz. M. Murphy, c/o W. F. Brice, Southern Bldg.	633 Girard St., N. E.	2,367.02	2,367.02	2,367.02
Delia Speich, c/o R. L. Sabin	705 17th St., S. E.	4,500.00	4,500.00	4,500.00
W. F. Clark et al., 417 4th St., N. W.	707 17th St., S. E.	4,500.00	4,500.00	4,500.00
W. F. Clark, 417 4th St., N. W.	715 17th St., S. E.	4,000.00	4,000.00	4,000.00
Virginia G. Sloan, 2737 Devonshire Pl.	1218 C St., S. E.	4,000.00	4,000.00	4,000.00

Schedule A-2—Continued.

Names of creditors.	Residences. (If unknown, that fact must be stated.)	When and where debts were contracted.	Value of securities.	Amount of debts.
Fidelity Mortg. Co., 1108 E St., N. W.	1506 Ridge St., S. E.	"	3,750.00	3,750.00
W. F. Brice, Southern Bldg.	1506 Ridge St., S. E.	"	863.28	863.28
W. F. Clark et al., 417 4th St., N. W.	1623 G St., S. E.	"	4,500.00	4,500.00
Eliz. M. Murphy, c/o W. F. Brice, Southern Bldg.	1623 G St., S. E.	"	2,741.09	2,741.09
Oak Hill Cemetery, 30th & R Sts., N. W.	1346 K St., S. E.	"	4,000.00	4,000.00
R. L. Sabin, Southern Bldg.	1354 K St., S. E.	"	4,250.00	4,250.00
Erskine Gordon et al., Hamilton Nat. Bank, 14th & G Sts., N. W.	1111 D St., S. E.	"	4,000.00	4,000.00
Erskine Gordon, Hamilton Nat. Bank.	1617 H St., S. E.	"	4,000.00	4,000.00
Frank Owings, Bank Com. & Sav. Bldg.	1111 D St., S. E.	"	938.36	938.36
Oak Hill Cemetery, 30th & R Sts., N. W.	1252 11th St., S. E.	"	2,000.00	2,000.00
Oak Hill Cemetery, 30th & R Sts., N. W.	1358 K St., S. E.	"	4,000.00	4,000.00
10				
Est. Catherine Lankan, Grace Castinett, Ex.	1358 K St., S. E.	"	1,691.32	1,691.32
Oak Hill Cemetery Co., 30th & R Sts., N. W.	1350 K St., S. E.	"	4,000.00	4,000.00
Chas. A. Kegwin, 1775 Cal. St., N. W.	6311 Ga. Ave., N. W.	"	5,000.00	5,000.00
L. F. Gardner, 1410 H St., N. W.	Lot 114, Sq. 3563	"	1,000.00	1,000.00
L. F. Gardner, 1410 H St., N. W.	Lot 116, Sq. 3563	"	500.00	500.00
Anna R. Sabin, Southern Bldg.	Lot 44, Sq. 3566	"	500.00	500.00
Anna R. Sabin, Southern Bldg.	Lot 45, Sq. 3566	"	500.00	500.00
Anna R. Sabin, Southern Bldg.	Lot 46, Sq. 3566	"	500.00	500.00
Anna R. Sabin, Southern Bldg.	Lot 47, Sq. 3566	"	500.00	500.00
Anna R. Sabin, Southern Bldg.	Lot 48, Sq. 3566	"	500.00	500.00
Anna R. Sabin, Southern Bldg.	Lot 49, Sq. 3566	"	500.00	500.00
W. F. Clark, 1410 H St., N. W.	Lot 53, Sq. 3566	"	500.00	500.00
W. F. Clark, 1410 H St., N. W.	Lot 54, Sq. 3566	"	500.00	500.00
Add Page 1 of A-2			\$522,851.22	\$522,851.22
			41,094.41	24,516.14
Total			\$563,945.63	\$547,367.36

H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE, *Pres.*,
Petitioner.

Note.—Give street and number address where possible.

Schedule A-3.

Creditors Whose Claims Are Unsecured.

[N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher.	Names of creditors.	Residences. (If unknown, that fact must be stated.)	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.	Amount.
Notes Payable	Riggs Natl. Bank, 15th & Pa. Ave., N. W.		Washington, D. C.	Note due April 9, 1935	\$2,700.00
Notes Payable	Second National Bank, 1331 G St., N. W.		"	Note due March 2, 1935	3,800.00
Notes Payable	Geo. E. Walker, Inc., 7th & K Sts., S. W.		"	Note of April 10, 1935	2,400.00
Total					\$8,900.00

H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE, *Pres.,*
Petitioner.

Note.—Give street and number address where possible.

Schedule A-4.

Liabilities on Notes or Bills Discounted Which Ought to be Paid by Drawers, Makers, Acceptors, or Indorsers.

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

Holders of notes.	Property secured.	Contracted.	Amount
Frank Owings.	1718 E St. S. E.	Washington, D. C.	\$2,317.19
Frank Owings.	104 You St. N. E.	"	2,021.21
Frank Owings.	12 Everts St. N. E.	"	1,659.23
Frank Owings.	3506 18th St. N. E.	"	2,713.48
Frank Owings.	1620 Pot. Av. S. E.	"	2,009.28
Frank Owings.	29 Bryant St. N. E.	"	1,893.98
Frank Owings.	817 Ky. Ave. S. E.	"	994.10
Frank Owings.	3620 18th St. N. E.	"	2,914.74
Frank Owings.	2425 3rd St. N. E.	"	3,274.97
Frank Owings.	3618 18th St. N. E.	"	1,999.78
Frank Owings.	1628 Potomac Av. S. E.	"	988.47
Frank Owings.	3616 Park Pl. N. W.	"	954.45
Frank Owings.	3622 18th St. N. E.	"	2,536.95
Frank Owings.	5725 13th St. N. W.	"	1,596.40
Frank Owings.	4010 21st St. N. E.	"	2,787.78
Frank Owings.	100 You St. N. E.	"	1,549.20
W. F. Brice.	3905 20th St. N. E.	"	3,059.02
Frank Owings.	3504 18th St. N. E.	"	2,194.70
Frank Owings.	4112 20th St. N. E.	"	1,034.46
Frank Owings.	1348 K St. S. E.	"	1,519.50
R. E. P. Kreiter.	6403 3rd St. N. W.	"	3,214.38
Frank Owings.	2429 3rd St. N. E.	"	2,664.71
Frank Owings.	302 T St. N. E.	"	1,857.96
Frank Owings.	1635 A St. N. E.	"	1,466.83
Frank Owings.	265 Ky. Ave. S. E.	"	1,957.43
Frank Owings.	1633 A St. N. E.	"	1,040.33

Frank Owings.....	1216 C St. S. E.....	"	3/ 1/1931	2,218.88
Frank Owings.....	4006 21st St. N. E.....	"	1/31/1935	2,770.33
Frank Owings.....	3021 24th St. N. E.....	"	12/31/1934	456.36
Frank Owings.....	1111 D St. S. E.....	"	12/31/1934	938.36
Frank Owings.....	1627 A St. N. E.....	"	10/15/1934	481.86
Frank Owings.....	2575 Tunlaw Rd. N. W.....	"	9/15/1934	1,317.15
Frank Owings.....	102 You St. N. E.....	"	12/ 1/1932	2,936.88
Frank Owings.....	1324 Pot. Av. S. E.....	"	3/ 7/1932	3,329.25
Frank Owings.....	1618 Pot. Av. S. E.....	"	2/10/1935	1,206.09
Ida R. Hamaker.....	813 Ky. Ave. S. E.....	"	10/15/1934	2,433.28
Ida R. Hamaker.....	3624 18th St. N. E.....	"	2/ 2/1935	1,591.28
Ida R. Hamaker.....	1204 Hemlock St. N. W.....	Washington, D. C.	2/ 1/1935	\$6,482.35
Ida R. Hamaker.....	2017 Bunker Hill Rd. N. E.....	"	1/17/1935	2,317.00
Ida R. Hamaker.....	311 Todd Place N. E.....	"	2/26/1935	1,554.46
Ida R. Hamaker.....	643 Col. Rd. N. W.....	"	1/22/1935	2,942.95
Ida R. Hamaker.....	3907 20th St. N. E.....	"	2/ 2/1935	3,415.94
Ida R. Hamaker.....	4101 21st St. N. E.....	"	2/15/1935	2,752.89
Ida R. Hamaker.....	2423 3rd St. N. E.....	"	1/23/1935	2,709.61
Ida R. Hamaker.....	1220 Hemlock St. N. W.....	"	2/ 1/1935	2,237.33
Ida R. Hamaker.....	2427 3rd St. N. E.....	"	2/ 1/1935	2,912.46
Ida R. Hamaker.....	1914 4th St. N. E.....	"	1/ 1/1935	4,328.24
Ida R. Hamaker.....	1631 G St. S. E.....	"	2/ 1/1935	2,417.22
Ida R. Hamaker.....	4105 21st St. N. E.....	"	1/15/1935	2,307.11
Della W. Rogers.....	1624 Pot. Ave. S. E.....	"	1/19/1935	593.96
W. J. Therrien.....	1638 Gales St. N. E.....	"	1/ 1/1935	2,082.01
Mary E. Richardson.....	4005 21st St. N. E.....	"	1/22/1935	3,033.81
Wm. Von Bernewitz.....	713 Princeton Pl. N. W.....	"	1/20/1935	1,362.37
Augustus Rubino.....	1337 E St. S. E. (Rear).....	"	1/21/1935	2,009.64
Ruth E. Laird.....	223 T St. N. E.....	"	12/26/1934	1,238.54
R. F. Able.....	1516 Ridge Pl. S. E.....	"	12/ 1/1933	1,163.85
13				
R. F. Able.....	4020 20th St. N. E.....	"	11/27/1933	3,060.90
Est. A. L. Haislip.....	4003 21st St. N. E.....	"	12/18/1934	2,744.85
Est. A. L. Haislip.....	4008 21st St. N. E.....	"	1/ 1/1931	2,985.00
Erskine Gordon.....	1633 Bennings Rd. N. E.....	"	7/24/1934	257.41
Est. E. J. Fitzgibbon.....	3508 18th St. N. E.....	"	2/25/1933	1,805.07

Schedule A-2—Continued.

Holders of notes.	Property secured.	Contracted.	Amount.
Sarah Boblitz.....	324 T St. N. E.....	"	1,484.63
Est. C. J. Lankau.....	1358 K St. S. E.....	"	1,691.32
D. T. Giltner.....	3608 18th St. N. E.....	"	2,413.23
Mary Speich.....	4011 21st St. N. E.....	"	3,922.25
Eliz. M. Murphy.....	1811 Monroe St. N. E.....	"	3,803.54
Eliz. M. Murphy.....	633 Girard St. N. E.....	"	2,401.23
Eliz. M. Murphy.....	3400 15th St. N. E.....	"	2,888.24
Eliz. M. Murphy.....	4032 20th St. N. E.....	"	3,236.22
Eliz. M. Murphy.....	313 Todd Pl. N. E.....	"	617.81
Eliz. M. Murphy.....	1623 G St. S. E.....	"	2,741.09
Eliz. M. Murphy.....	5234 5th St. N. W.....	"	2,850.00
W. F. Brice.....	24 Everts St. N. E.....	"	1,771.21
W. F. Brice.....	6411 3rd St. N. W.....	"	3,385.44
W. F. Brice.....	757 Princeton Pl. N. W.....	"	1,448.94
W. F. Brice.....	1313 H St. N. W.....	"	6,481.88
W. F. Brice.....	320 T St. N. E.....	"	1,341.17
W. F. Brice.....	4004 21st St. N. E.....	"	1,005.64
W. F. Brice.....	2443 Tunlaw Rd. N. W.....	"	684.89
W. F. Brice.....	2431 3rd St. N. E.....	"	2,941.74
W. F. Brice.....	310 T St. N. E.....	"	302.97
W. F. Brice.....	3901 20th St. N. E.....	"	3,045.64
W. F. Brice.....	5829 Colo. Ave. N. W.....	"	2,924.82
W. F. Brice.....	228 15th St. N. E.....	"	1,345.88
W. F. Brice.....	6407 3rd St. N. W.....	"	2,343.30
W. F. Brice.....	1506 Ridge Pl. S. E.....	"	863.28
W. F. Brice.....	4009 21st St. N. E.....	"	2,550.80
W. F. Brice.....	701 17th St. S. E.....	"	2,165.50
G. Riani.....	3602 18th St. N. E.....	"	2,957.12
M. M. Horowitz.....	321 Todd Pl. N. E.....	"	2,638.98
Sara E. Berens.....	312 T St. N. E.....	"	1,130.75
May R. Springman.....	752 20th St. N. E.....	"	2,050.44
May R. Springman.....	318 T St. N. E.....	"	1,082.56
Eliz. B. Morgan.....	1622 Pot. Ave. S. E.....	"	1,969.83

Eliz. B. Morgan.....	1149 5th St. N. E.....	"	9/22/1934	1,457.69
Eliz. B. Morgan.....	1843 Monroe St. N. E.....	"	8/10/1934	1,796.78
Eliz. B. Morgan.....	757 Princeton St. N. W.....	"	3/ 1/1934	2,799.84
Eliz. B. Morgan.....	5311 Ill. Ave. N. W.....	"	10/ 1/1934	2,308.66
W. P. Putman.....	304 T St. N. E.....	"	12/31/1934	1,386.18
W. P. Putman.....	1902 4th St. N. E.....	"	12/31/1934	665.31
G. Riani.....	1362 K St. S. E.....	"	9/20/1933	1,810.47
Phebe A. Perry (Lot).....	4112 20th St. N. E.....	"	6/ 1/1932	877.82
Gertrude A. Wise.....	322 T St. N. E.....	"	12/31/1934	1,905.20
Gertrude A. Wise.....	325 Todd Pl. N. E.....	"	12/31/1934	1,859.39
Est. Truesdale.....	605 Otis St. N. W.....	"	12/31/1934	268.36
Est. Truesdale.....	637 Otis St. N. W.....	"	2/29/1931	1,354.73
W. F. Brice.....	5312 Ill. Ave. N. W.....	"	12/ 1/1934	214.11
Est. Burkhardt.....	3646 Park Pl. N. W.....	"	8/25/1932	899.52
Est. Burkhardt.....	607 Otis Pl. N. W.....	"	10/28/1932	1,447.78
Est. Burkhardt.....	751 Princeton Pl. N. W.....	"	8/30/1934	2,528.72
Est. Burkhardt.....	715 Princeton Pl. N. W.....	"	11/17/1932	1,509.82
14				
Est. Burkhardt.....	1322 Potomac Av. S. E.....	"	11/ 1/1931	4,150.00
Est. Burkhardt.....	19 Evarts St. N. E.....	"	12/ 8/1934	1,755.64
Est. Burkhardt.....	749 Princeton Pl. N. W.....	"	11/ 7/1932	1,996.26
Frank Owings.....	1606 A St. N. E.....	"	1/18/1935	563.75
R. E. P. Kreiter.....	4104 20th St. N. E.....	"	8/ 1/1933	3,306.14
R. E. P. Kreiter.....	1627 G St. S. E.....	"	6/ 1/1934	3,212.75
R. E. P. Kreiter.....	1733 Upshur St. N. W.....	"	8/ 1/1934	4,678.45
R. E. P. Kreiter.....	306 T St. N. E.....	"	12/31/1934	1,760.10
R. E. P. Kreiter.....	4019 21st St. N. E.....	"	1/ 1/1934	3,700.00
R. E. P. Kreiter.....	3909 20th St. N. E.....	"	12/ 1/1933	3,289.46
R. E. P. Kreiter.....	1629 G St. S. E.....	"	6/ 1/1933	3,463.54
R. E. P. Kreiter.....	4012 21st St. N. E.....	"	12/31/1934	2,724.11
R. E. P. Kreiter.....	1343 D St. N. E.....	"	1/20/1935	184.02
R. E. P. Kreiter.....	4016 21st St. N. E.....	"	9/21/1933	1,950.00
R. E. P. Kreiter.....	1621 Monroe St. N. E.....	"	1/20/1934	2,973.03
R. E. P. Kreiter.....	1108 E St. N. E.....	"	5/ 7/1934	3,119.48
R. E. P. Kreiter.....	1625 G St. S. E.....	"	12/ 6/1933	3,397.84
R. E. P. Kreiter.....	1326 Pot. Av. S. E.....	"	11/ 1/1934	2,831.75

Schedule A-4—Continued.

Holders of notes.	Property secured.	Contracted.	Amount.
R. E. P. Kreiter.....	713 17th St. S. E.....	"	1,500.00
R. E. P. Kreiter.....	1629 A St. N. E.....	"	598.66
R. E. P. Kreiter.....	300 T St. N. E.....	"	243.14
R. E. P. Kreiter.....	1214 Owen Pl. N. E.....	"	392.73
R. E. P. Kreiter.....	1600 A St. N. E.....	"	3,942.50
R. E. P. Kreiter.....	1121 5th St. N. E.....	"	1,678.50
R. E. P. Kreiter.....	1214 Hemlock St. N. W.....	"	2,745.19
R. E. P. Kreiter.....	4103 21st St. N. E.....	"	3,190.21
R. E. P. Kreiter.....	4108 20th St. N. E.....	"	2,042.53
R. E. P. Kreiter.....	1327 E St. S. E.....	"	800.61
Riker Realty Co.....	219 Channing St. N. E.....	"	303.46
Riker Realty Co.....	220 15th St. N. E.....	"	1,095.79
Riker Realty Co.....	829 Ky. Ave. S. E.....	"	1,295.46
Riker Realty Co.....	218 15th St. N. E.....	"	1,048.26
Est. Burkhardt.....	717 Princeton Pl. N. W.....	"	6,250.00
Est. Burkhardt.....	3628 18th St. N. E.....	"	1,961.28

All of said notes are second trust notes and should be paid by the makers thereof. They were sold with the following conditional endorsement on back of same:

Conditional Endorsement

"We guarantee the payment of this note, waiving protest, with the understanding that if we are called upon to make good said guarantee, we have the option of paying note in cash or substituting another note of equal value and security and withdrawing this note. In case of default of maker of any payment due on this note, we are to be notified in writing by owner of note of such default within 30 days from time when such payment was due, otherwise this guarantee to be null and void.

H. R. HOWENSTEIN CO.,

By _____, *Pres.*"

Total.....	\$298,332.58
H. R. HOWENSTEIN CO.,	
By E. CATESBY ROWZEE, <i>Pres.</i> ,	
<i>Petitioner.</i>	

Note.—Give street and number address where possible.

15 Addresses of Holders of the Foregoing Described
Notes.

Eliz. M. Murphy, c/o W. F. Brice, Southern Building,
Washington, D. C.

Frank Owings, 7th & E Sts., N. W., Washington, D. C.

W. F. Brice, Southern Building, Washington, D. C.

R. E. P. Kreiter, 815 15th St., N. W., Washington, D. C.

Ida R. Hamaker, Annapolis Hotel, Washington, D. C.

Della W. Rogers, 1360 Meridian Pl. N. W., Washington,
D. C.

W. J. Therrien, 1008 3rd St., N. E., Washington, D. C.

Mary E. Richardson, 729 Fern Pl., N. W., Washington,
D. C.

Wm. Von Bernewitz, 1819 Varnum St., N. W., Washington,
D. C.

Augustus Rubino, 1412 Madison St., N. W., Washington,
D. C.

Ruth E. Laird, Box 259, Route #1, Norfolk, Va.

R. F. Able, 2530 12th St., N. W., Washington, D. C.

Est. A. L. Haislip, 25 Takoma Ave., Takoma Park, Md.

Erskine Gordon, 14th & G Sts., N. W., Washington, D. C.

Est. E. J. Fitzgibbon, 1631 Newton St., N. W., Washing-
ton, D. C.

Sarah Boblitz, 3412 Clifton Ave., Baltimore, Md.

Est. C. J. Lankau, c/o Grace Costinell, 1442 Fairmont St.,
N. W., Washington, D. C.

D. T. Giltner, 4002 21st St., N. E., Washington, D. C.

Mary Speich, c/o R. L. Sabin, Southern Building, Wash-
ington, D. C.

G. Riani, c/o J. J. Costinett, 1212 N. Y. Ave., N. W., Wash-
ington, D. C.

M. M. Horowitz, 4510 Ga. Ave., N. W., Washington, D. C.

Sara E. Berens, 17575 Stoepel Ave., Detroit, Michigan.

May R. Springman, 635 Md. Ave., S. W., Washington, D. C.

Eliz. B. Morgan, 117-23 Union Turnpike, Forest Hill, Long
Island, New York.

W. P. Putman, 2955 Carlton Ave., N. E., Washington,
D. C.

Phebe A. Perry, 817 Fair Avenue, Silver Spring, Md.

Gertrude A. Wise, 17525 Stoepel Ave., Detroit, Michigan.

Est. Truesdale, c/o Wash. Loan & Trust Co., Washington,
D. C.

Est. Burkhardt, c/o Gibbs L. Baker, 815 15th St., N. W.,
Washington, D. C.

Riker Realty Co., 1010 Vt. Ave., N. W., Washington, D. C.

H. R. HOWENSTEIN CO.,

By E. CATESBY ROWZEE,

*Pres.,
Petitioner.*

Note.—Give street and number address where possible.

16

Schedule A-5.

Accommodation Paper.

[N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor or endorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

None.

H. R. HOWENSTEIN CO.,

By E. CATESBY ROWZEE,

*Pres.,
Petitioner.*

N. B.—Oath as prescribed to Schedule A, to be annexed to this sheet.

17

No. —.

In the Matter of H. R. Howenstein Co., Bankrupt.

Oath to Schedule A.

UNITED STATES OF AMERICA,
District of Columbia, ss:

On this first day of March, A. D., 1935, before me personally came E. Catesby Rowzee, the person mentioned in and who subscribed to the foregoing Schedule, and who, being by me first duly sworn, did declare said Schedule to

be a statement of all debts of the H. R. Howenstein Co., in accordance with the Acts of Congress relating to bankruptcy.

E. CATESBY ROWZEE.

Subscribed and sworn to before me this first day of March, A. D. 1935.

[NOTARIAL SEAL.]

BELLE FOUCAULT,
Notary Public, D. C.

Com. exp. 10/1/39.

To be attached to Schedule A [5] after execution before proper officer.

Statement of All Property of Bankrupt.

Schedule B-1.

Real Estate.

Location and description of all real estate owned by debtor, or held by him.	Incumbrances thereon, if any, and dates thereof. Statement of particulars relating thereto.				Estimated value (actual cost).
	1st Tr.	Due	2nd Tr.		
Improved Real Estate.					
765 Princeton St. N. W.	4,750.00	Sep. 15, 1935	None		8,123.65
605 Otis Pl. N. W.	3,750.00	Dec. 26, 1934	268.36		5,256.46
2439 Tunlaw Rd. N. W.	4,500.00	Nov. 1, 1937	None		8,174.48
1315 H St. N. W.	75,000.00	June 16, 1937	6,981.88		84,803.38
Wade, 1201 13th St.	138,750.00	June 1, 1935	28,700.00		172,420.83
304 T St. N. E.	4,500.00	Mar. 7, 1936	1,386.18		6,014.14
306 T St. N. E.	4,500.00	Feb. 15, 1936	1,760.10		6,364.62
303 T St. N. E.	4,500.00	Feb. 10, 1936	None		5,631.50
310 T St. N. E.	4,500.00	Feb. 3, 1936	302.97		5,716.42
312 T St. N. E.	4,500.00	Feb. 2, 1936	1,130.75		5,502.88
316 T St. N. E.	4,500.00	Apr. 9, 1935	None		5,382.46
318 T St. N. E.	4,500.00	Apr. 9, 1935	1,082.56		5,551.86
320 T St. N. E.	4,500.00	Apr. 9, 1935	1,341.17		6,264.64
322 T St. N. E. (Garage)	4,500.00	Apr. 9, 1935	1,905.20		6,233.64
303 Todd St. N. E.	4,250.00	Aug. 10, 1936	None		7,546.48
305 Todd St. N. E.	4,250.00	Aug. 10, 1936	None		6,782.39
309 Todd St. N. E.	4,500.00	May 9, 1936	None		4,768.20
311 Todd St. N. E.	4,500.00	May 9, 1933	2,002.69		6,478.81
313 Todd St. N. E.	4,500.00	Apr. 11, 1936	617.81		5,743.10
315 Todd St. N. E.	4,250.00	Apr. 11, 1936	None		5,394.03
319 Todd St. N. E.	4,250.00	Dec. 10, 1935	None		5,235.30
321 Todd St. N. E.	4,000.00	Dec. 28, 1935	2,638.98		6,546.97
325 Todd St. N. E.	4,000.00	Nov. 11, 1937	1,859.39		6,324.80

314 Todd St. N. E.	4,000.00	Dec. 28, 1935	None	5,556.13
316 Todd St. N. E.	4,000.00	Dec. 28, 1935	None	4,563.14
318 Todd St. N. E.	4,250.00	Nov. 11, 1932	None	5,806.13
320 Todd St. N. E.	4,250.00	Nov. 18, 1932	None	4,984.93
324 Todd St. N. E.	4,250.00	Nov. 18, 1932	None	4,852.65
1902 Fourth St. N. E.	7,000.00	Dec. 6, 1935	665.31	8,969.77
1912 Fourth St. N. E.	6,000.00	June 21, 1936	None	8,038.05
3406 15th St. N. E.	5,000.00	Oct. 22, 1935	None	8,192.90
1452 Lawrence St. N. E.	5,000.00	June 1, 1936	None	6,279.86
3903 20th St. N. E.	4,500.00	July 18, 1936	None	6,452.38
3021 24th St. N. E.	4,000.00	Apr. 8, 1936	456.36	5,756.99
2831 Myrtle St. N. E.	3,850.00	Sep. 30, 1935	None	7,253.72
1624 Gales St. N. E.	3,500.00	Nov. 1, 1936	None	4,801.58
1654 Gales St. N. E.	3,500.00	Oct. 18, 1936	None	6,047.13
309 10th St. N. E. Flats	4,500.00	May 27, 1936	None	6,256.99
1117 7th St. N. E.	4,000.00	Nov. 20, 1935	None	4,526.20
1218 Owens St. N. E.	4,000.00	Sep. 19, 1937	None	4,260.68
11 Evarts St. N. E.	4,250.00	July 30, 1935	None	6,043.62
752 19th St. N. E.	3,500.00	May 18, 1936	2,050.44	5,797.36
2421 Third St. N. E.	4,000.00	May 15, 1937	None	6,529.63
633 Girard St. N. E.	4,000.00	Apr. 12, 1935	2,367.02	6,506.07
705 17th St. S. E.	4,500.00	Mar. 21, 1935	None	5,017.02
707 17th St. S. E.	4,500.00	Apr. 5, 1935	None	5,012.87
715 17th St. S. E.	4,000.00	Mar. 18, 1935	None	5,879.99
1218 C St. S. E.	4,000.00	Sep. 1, 1935	None	4,774.26
1506 Ridge St. S. E.	3,750.00	Mar. 7, 1936	863.28	5,066.75
1623 G St. S. E.	4,500.00	Mar. 17, 1936	2,741.09	6,364.54
1346 K St. S. E.	4,000.00	Jan. 15, 1938	None	4,904.15
1354 K St. S. E.	4,250.00	Aug. 27, 1936	None	4,671.46
1111 D St. S. E.	4,000.00	Sep. 24, 1936	938.36	6,360.04
1617 H St. S. E.	4,000.00	Sep. 1, 1937	None	7,066.03
1252 11th St. S. E.	2,000.00	Apr. 28, 1935	None	3,576.22
1358 K St. S. E.	4,000.00	Oct. 10, 1937	1,691.32	5,643.80
1350 K St. S. E.	4,000.00	Jan. 15, 1938	None	6,212.24

Unimproved Real Estate

Business Property, Georgia Avenue, near Tuckerman St., N. W., known as 6311 Georgia Avenue, N. W., Lot 6 and part lot 7, sq. 2978. Suitable for auto garage or stores. 64.04 by 200 to alley, 12,750 sq. ft. Trust \$5,000.00, three years, 6%, May 17, 1936..... \$11,102.35

Woodridge Subdivision, 20th and Shepherd St., N. E.

Sq.	Lots	Location	Trust	No value above trusts and taxes
4193	1 to 32	Bunker Hill Rd. & 19th	Held by Federal-American National Bank & Trust Co., Date Nov. 17, 1935, 6½% interest, due Nov. 17, 1926, \$10,000.00. Blanket. Overdue.	
4194	1 to 17	Shepherd St. & 19th		
4192	All	Bunker Hill Rd. & 19th		
4195	All	Bunker Hill Rd. & 19th		
4230	32	Bunker Hill Rd. 20 & 21		500.00
4230	33	Bunker Hill Rd. 20 & 21	Clear	500.00
4230	34	Bunker Hill Rd. 20 & 21	Clear	500.00
4230	35	Bunker Hill Rd. 20 & 21	Clear	500.00
4230	36	Bunker Hill Rd. 20 & 21	Clear	500.00
Herald Harbor, Lot 26, Block 37, Anne Arundel Co., Md., 25 x 100 ft.				100.00

Signed by R. P. O'Neill—Int. paid to December 17, 1931

N. E. Corner 3rd and You Sts., N. W.

3563	114	Dec. 9th, 1936	Gardner	\$1,000.00	6%	1,500.00
3563	116	Dec. 9th, 1936	Gardner	500.00	6%	1,000.00

Todd St., North Side, 3 & 4 N. E., 18 x 90 to 16 foot alley

3566	44	Dec. 9th, 1936	Sabin	500.00	6%	750.00
3566	45	Dec. 9th, 1936	Sabin	500.00	6%	750.00
3566	46	Dec. 9th, 1936	Sabin	500.00	6%	750.00
3566	47	Dec. 9th, 1936	Sabin	500.00	6%	750.00
3566	48	Dec. 9th, 1936	Sabin	500.00	6%	750.00
3566	49	Dec. 9th, 1936	Sabin	500.00	6%	750.00
3566	50	Dec. 9th, 1936	Clear			750.00

You St., 3 and 4 N. E., South Side—18 by 97 each

3566	51		Clear	1,000.00
3566	52		Clear	750.00
3566	53	Dec. 9th, 1936	500.00	750.00
3566	54	Dec. 9th, 1936	500.00	750.00
			6%	
			6%	

Note: Total encumbrances against property—\$534,100.00.

Total..... \$608,238.67

H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE, Pres.,
Petitioner.

These schedules must be executed in triplicate.

20 In the Matter of H. R. Howenstein Co., Bankrupt.

Schedule "B" 2.

Personal Property.

(This Schedule must be executed in triplicate.)

General head. Itemized list of personal property.

General head. Itemized list of personal property.

a—Cash on hand: In cash drawer	10.43
b—Bills of exchange, promissory notes, or securities of any description (each to be set out separately): See list of notes receivable attached hereto	86,322.40
c—Stock in trade, in . . . business of at of the value of: None.	
d—Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz: None.	
e—Books, prints, and pictures, viz: None.	
f—Horses, cows, sheep and other animals (with number of each), viz: None.	
g—Carriages and other vehicles, viz: 1 1930 Buick Coupe, two passenger, second hand. . . .	125.00
h—Farming stock and implements of husbandry, viz: None.	
i—Shipping and shares in vessels, viz: None.	
k—Machinery, fixtures, apparatus and tools used in business with the place where each is situated, viz: Office furniture and fixtures, 1315 H Street, N. W.	465.58
l—Patents, copyrights and trade-marks viz: None.	
m—Goods or personal property of any other description, with the place where each is situated, viz: None.	

Total \$86,923.41

H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE,
Pres.,
Petitioner.

Schedule "B" 2, Item (b).

Notes Receivable

(Same being second trust notes secured on homes of makers, addresses of which are stated below.)

Name and address	Original amount	Monthly payments	Balance due	Held for collection or collateral by
David Robertson, 129 16th St. N. E.	\$3,200.00	\$41.04	\$116.89	Amer. Sec. & Trust Co.
Edw. W. Ancrum, 121 16th St. N. E.	2,567.80	22.50	1,958.34	Lincoln Bank
Chas. Clark, 1021 9th St. N. E.	3,850.00	25.00	3,174.93	City Bank
A. B. Clemmer, 214 15th St. N. E.	3,950.00	35.00	3,579.19	City Bank
Wm. M. Cutler, 709 17th St. N. E.	3,850.00	42.50	3,068.41	Debtor
A. A. Dampier, 3611 18th St. N. E.	1,983.59	42.75	1,983.59	Debtor
G. DiGiovanna, 1644 Gales St.	2,900.00	26.04	2,311.07	Debtor
J. B. Donato, 1630 Gales St.	3,000.00	32.50	2,522.48	Debtor
R. J. Doyle, 229 Channing St.	2,950.00	30.00	1,317.59	Debtor
R. B. King, 4710 Chev. Ch. Blv.	5,800.00	37.50	5,680.47	Debtor
B. F. Lusby, 213 Channing St.	3,150.00	36.67	1,754.23	Debtor
Leo P. Moriarty, 123 4th St. N. E.	1,200.00	10.00	1,200.00	Debtor
Elmer B. Moubray, 3416 Warder St.	3,700.00	30.00	2,697.67	Debtor
Edw. O. Peterson, 4028 20th St. N. E.	3,650.00	35.00	3,333.70	Lincoln Bank
Geo. W. Rose, 1112 E St. N. E.	4,100.00	33.75	3,627.78	Debtor
Chas. Walker, 424 15th St. N. E.	3,850.00	37.50	3,400.21	Debtor
G. Le Bird, 6405 3rd St. N. W.	3,900.00	39.00	3,222.22	Debtor
Maud Anderson, 532 9th St. N. E.	3,750.00	25.00	432.33	Fed. Amer. Bank
Ellen Rodda, 10 Evarts St.	4,750.00	40.00	3,753.68	Fed. Amer. Bank
Blackistone, 1407 H St. N. W.	21,000.00	200.00	15,900.00	Lincoln Bank
C. C. Grimes, 322 Todd Pl. N. E.	4,100.00	41.98	2,522.79	Lincoln Bank
F. L. Scott, 3410 15th St. N. E.	5,400.00	45.00	5,155.54	Lincoln Bank
Lucy Miller, 1619 Monroe St. N. E.	3,450.00	33.00	2,462.25	Riggs Bank
Harry A. March, 1811 Monroe St., N. E.	1,000.00	20.00	1,000.00	Debtor
Elizabeth Holmes, 3408 15th St. N. E.	4,700.00	35.00	4,392.85	Debtor
Jesse L. Haney, 1616 Gales St.	1,350.00	32.50	1,167.02	Lincoln Bank

Schedule "B" 2, Item (b).—Continued.

Notes Receivable

(Same being second trust notes secured on homes of makers, addresses of which are stated below.)

Name and address	Original amount	Monthly payments	Balance due	Held for collection or collateral by
Lloyd H. Johnson, 112 You St. N. E.....	1,000.00	10.00	979.85	Debtor
Frank Demato, 1336 E St. N. E.....	1,071.00	17.00	702.45	Debtor
Oliver L. Murray, Low 20 & Shep.....	500.00	3.35	500.00	Debtor
Pete Pergantis, 761 Princeton.....	250.00	10.00	150.67	Debtor
Ray G. Delphey, 4010 21st St. N. E.....	1,062.22	40.00	1,062.22	Debtor
M. Bertolini, 307 Todd Pl. N. E.....	1,200.00	10.00	1,191.98	Debtor
Total.....			<u>\$86,322.40</u>	

H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE, Pres.

23 In the Matter of H. R. Howenstein Co., Bankrupt.

Schedule "B" 3.

Choses in Action.

(This Schedule must be executed in triplicate.)

General head. Itemized list of personal property.

a. Debts due petitioner on open account: See schedule attached hereto	11,775.46
b. Stocks in incorporated companies, interest in joint stock companies and negotiable bonds: None.	
c. Policies of insurance: None (excepting certain fire and public liabilities policies transferred to Selig C. Brez, as attorney for bankrupt.)	
d. Unliquidated claims of every nature, with their estimated value: None.	
e. Deposits of money in banking institutions and elsewhere: Riggs National Bank, 15th & Pa. Ave., N. W.	100.00
The City Bank, 8th and G Sts., S. E.	6.35
Leon Tobriner and W. Gwynn Gardiner (in escrow)	3,084.09
Total	\$14,965.90

H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE,
Pres.,
Petitioner.

24 Schedule "B" 3.

a. Debts Due Petitioner on Open Account.

Name and address.	Amount.
S. W. Barrow, 3515 20th St., N.E.	\$ 189.98
H. R. Bressler, 5314 Illinois Avenue	37.04
John Paul Collins, 4003 21st St., N.E.	25.98
C. M. Contee	13.97
R. J. Doyle, 229 Channing St., N.E.	10.00
L. M. Fitzgerald, 3508 18th St., N.E.	57.60
F. P. Herrmann, 302 T St., N.E.	64.29

Name and address.	Amount.
H. R. Howenstein, 1406 H St., N.W.	10,921.05
W. J. Jones, 817 Kentucky Avenue, S.E.	40.26
U. S. Tile & Marble Co., 2020 Georgia Avenue, N.W.	9.78
Elsie May Younger, Arlington Junction, Virginia	237.88
H. S. Welch, 927 15th St., N.W.	167.63
Total	\$11,775.46

H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE,
Pres.

25

Schedule B-4.

Property in Reversion, Remainder or Expectancy, Including Property Held in Trust for the Debtor or Subject to Any Power or Right to Dispose of or to Charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditor, the date of such deed should be stated, the name and address of the persons to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as known to the debtor.]

Interest in land: None.

Personal property: None.

Property in money, stocks, shares, bonds, annuities, etc.:
None.

Rights and powers, legacies and bequests: None.

Property heretofore conveyed for benefit of creditor: None.

What portion of debtor's property has been conveyed by deed of assignment or otherwise for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor: None.

What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy: None.

H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE,
Pres.,
Petitioner.

26 In the Matter of H. R. Howenstein Co., Bankrupt.

Schedule "B" 5.

A particular statement of the property claimed as exempted from the operation of the acts of Congress relating to Bankruptcy, giving each item of property and its valuation; and if any portion of it is real estate, its location, description, and present use.

(This Schedule must be executed in Triplicate.)

Military uniform, arms and equipment: None.

Property claimed to be exempted by state laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the state creating the exemption: None.

H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE,
Pres.,
Petitioner.

NOTE.—If list is too long attach other sheets and sign last one.

27 In the Matter of H. R. Howenstein Co., Bankrupt.

Schedule "B" 6.

Books, Papers, Deeds and Writings Relating to Bankrupt's
Business and Estate.

The following is a true list of all books, papers, deeds and writings relating to my trade, business, dealings, estate and effects or any part thereof, which, at the date of this Petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me or for my use, benefit or advantage; and also of all others which have been heretofore at any time in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books: Complete set of double entry bookkeeping system.
 Deeds: Miscellaneous deeds to real estate owned by debtor.
 Papers: Miscellaneous.

H. R. HOWENSTEIN CO.,
 By E. CATESBY ROWZEE,
Pres.,
Petitioner.

A library catalogue may be attached hereto as part of this Schedule, but must be so noted hereon.

28 In the Matter of H. R. Howenstein Co., Bankrupt.

Oath to Schedule B.

UNITED STATES OF AMERICA,
District of Columbia, ss:

On this first day of March, A. D. 1935, before me personally came E. Catesby Rowzee, the person mentioned in and who subscribed to the foregoing Schedule, and who, being by me first duly sworn, did declare the said Schedule to be a statement of all of the H. R. Howenstein Co. estate, both real and personal, in accordance with the Acts of Congress relating to Bankruptcy.

E. CATESBY ROWZEE.

Subscribed and sworn to before me this first day of March, A. D. 1935.

[NOTARIAL SEAL.]

BELLE FOUCAULT,
Notary Public, D. C.

Commission expires, 10/1/39.

To be attached to Schedule B [6] after execution before proper officer.

29 Summary of Debts and Assets.

(From the Statements of the Bankrupt in Schedules
 A and B.)

(Petition by Debtor.)

Schedule A (1) Taxes and debts due United
 States

Schedule A 1 (2) Taxes due States, Counties,

Districts, and Municipalities..... \$7,700.00

Schedule A 1 (3) Wages	
Schedule A 1 (4) Other debts preferred by law ..	
Schedule A 2 Secured claims	547,367.36
Schedule A 3 Unsecured claims	8,900.00
Schedule A 4 Notes and bills which ought to be paid by other parties thereto	298,332.58
Schedule A 5 Accommodation Paper	
Schedule A, total	\$862,299.94
Schedule B 1 Real Estate	608,238.67
Schedule B 2-a Cash on hand	10.43
Schedule B 2-b Bills, Promissory Notes, and Se- curities	86,322.40
Schedule B 2-c Stock in Trade	
Schedule B 2-d Household Goods, &c.	
Schedule B 2-e Books, Prints, and Pictures	
Schedule B 2-f Horses, Cows, and other animals	
Schedule B 2-g Carriages and other vehicles	125.00
Schedule B 2-h Farming stock and Implements ..	
Schedule B 2-i Shipping and shares in vessels ..	
Schedule B 2-k Machinery, Tools, &c.	465.58
Schedule B 2-l Patents, Copyrights, and Trade- marks	
Schedule B 2-m Other Personal Property	
Schedule B 3-a Debts due on open accounts	11,775.46
Schedule B 3-b Stocks, Negotiable Bonds, &c. ...	
Schedule B 3-c Policies of Insurance	
Schedule B 3-d Unliquidated Claims	
Schedule B 3-e Deposits of money in banks and elsewhere	3,190.44
Schedule B 4 Property in Reversion, Remainder, Trust, &c.	
Schedule B 5 Property Claimed to be Exempted \$	
Schedule B 6 Books, Deeds, and Papers	
Schedule B, total	\$710,127.98

H. R. HOWENSTEIN CO.,
By E. CATESBY ROWZEE,
Pres.,
Petitioner.

30 It appearing to the Court that John A. Reilly, Esq., of the City of Washington, District of Columbia, has

been duly appointed trustee of the estate of the above-named bankrupt, and has given a bond with Massachusetts Bonding and Insurance Company as surety for the faithful performance of his official duties, in the amount fixed by the creditors, to wit, in the sum of \$15,000.00, it is this 12th day of March, 1935, ordered that the said bond be, and the same hereby is, approved.

FRED J. EDEN,
Referee in Bankruptcy.

Filed Mar. 14, 1935.

31 Massachusetts Bonding and Insurance Company,
 Home Office: Boston, Massachusetts.

In the Supreme Court of the District of Columbia.

In Bankruptcy No. 3184.

In the Matter of H. R. HOWENSTEIN COMPANY, Washington,
 D. C., Bankrupt.

Know all men by these presents:

That we, John A. Reilly, of Washington, D. C., as Principal, and the Massachusetts Bonding and Insurance Company, a corporation having its principal office at Boston, Mass., as Surety, are held and firmly bound unto the United States of America in the sum of Fifteen thousand Dollars in lawful money of the United States, for which payment, well and truly to be made, we bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Signed and sealed this 12th day of March, A. D. 1935.

The condition of this obligation is such that whereas the above named was, on the 12th day of March, A. D. 1935, appointed Trustee in the case pending in bankruptcy in the said Court, wherein H. R. Howenstein Company is the Bankrupt Corporation, and he, the said John A. Reilly, has accepted said trust with all the duties and obligations pertaining thereto,

Now, therefore, if the said John A. Reilly, as aforesaid, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all moneys, assets, and effects of the estate of the said Bank-

rupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said Trustee, then this obligation to be void; otherwise to remain in full force and virtue,

JOHN A. REILLY, [SEAL.]
MASSACHUSETTS BONDING AND
INSURANCE COMPANY,
By JOSEPH R. POWELL,
Attorney-in-Fact.

Attest: — — —.

Signed and sealed in the presence of
C. THOMAS DU FIEF,
A. G. McGUIRE,

Filed Mar. 14, 1935. Frank E. Cunningham, Clerk.

32 *Order Authorizing Trustee in Bankruptcy to*
 Employ Counsel.

Filed Mar. 15, 1935.

Upon consideration of the petition of John A. Reilly, Trustee in Bankruptcy of H. R. Howenstein Company, a corporation, filed herein on the 15th day of March, 1935, and of the certificate of the referee in bankruptcy, and it appearing to the Court that certain litigation is now pending in the Supreme Court of the District of Columbia known as Anna S. Sabin vs. Herman R. Howenstein, et al., Equity 57,136 which said proceeding materially affects the assets now in the possession of the said Trustee and immediate steps should be taken to protect his rights in the premises;

And it further appearing from said petition that because of the nature of the assets of said bankrupt estate the Trustee is of the opinion that it will be necessary for him to have legal advice on matters and questions that have already arisen and will in the future arise;

And it further appearing from said petition that the Trustee in Bankruptcy requests the authority to employ H. Winship Wheatley as an attorney to represent him in said bankruptcy proceedings;

And it further appearing from said petition that the said attorney has no connection with said bankrupt corpora-

tion or any person having an interest adverse to the said Trustee or creditors of the estate;

It is, by the Court, this 15th day of March, 1935, ordered that the said John A. Reilly be and he is hereby authorized and directed to employ H. Winship Wheatley as his counsel in connection with his duties as Trustee in Bankruptcy as aforesaid.

JOSEPH W. COX,
Justice.

33 *Petition of Trustee for Leave to Sell Free of Incumbrance and to Restrain Lien Claimants.*

Filed Mar. 18, 1935.

The petition of John A. Reilly respectfully shows to the court as follows:

1. Petitioner is a citizen of the State of Maryland and a resident thereof but has an office in the District of Columbia and files this petition as trustee in bankruptcy of H. R. Howenstein Co.

2. On the 23d day of February, 1935, H. R. Howenstein Co. was adjudicated a bankrupt in this cause and court and thereafter, on the 12th day of March, 1935, petitioner was duly elected trustee in bankruptcy and has qualified as such.

3. The schedules in bankruptcy show eighty one (81) parcels of real estate owned by the bankrupt. Some of these parcels are incumbered, others are free of incumbrance. Taxes are overdue on all of them.

4. The bankrupt has delivered to the trustee an offer of sale for five of the lots, to wit, lots thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35) and thirty-six (36) in square forty-two hundred and thirty (4230), situated on the south side of Bunker Hill Road, between Twentieth and Twenty-first Streets, North East. These lots are not incumbered by deed of trust or mortgage but are subject to a lis pendens, by reason of the equity suit hereinafter described.

34 5. The offer is from John D. Green, for \$2,500.00 cash, subject to a brokerage commission to C. H. Hillegeist Co., of \$125. The property is unimproved and has been appraised by Adam A. Weschler, Clarence F.

Donohue and George R. Linkins, appraisers appointed in this cause, for \$2,500. The trustee has examined the property and thinks the offer a fair one.

6. On November 10, 1934, Anna S. Sabin, filed in the equity side of this court, equity proceedings No. 57936, in which she named the H. R. Howenstein Company a defendant. In her bill of complaint, she alleged that on October 21, 1933, she had obtained a judgment against Herman R. Howenstein in the law side of the Supreme Court of the District of Columbia, for \$50,000. and interest, in law cause No. 83220, and on February 27, 1934, she had obtained another judgment against Herman R. Howenstein in the sum of \$15,000 and interest, in law cause No. 83640, in the Supreme Court of the District of Columbia. She alleged that a writ of fieri facias had thereafter been issued on each of said judgments and had been returned by the United States Marshal "nulla bona."

7. In said bill of complaint (paragraph 16 thereof) said Anna S. Sabin alleged, upon information and belief, that Herman R. Howenstein had conveyed certain real estate to the H. R. Howenstein Company, without receiving any valuable or other consideration therefor and described in said bill real estate set forth in Exhibit "A" attached hereto and which is prayed to be read as a part hereof. The bill prayed, among other things, that the court decree that the said real property be subject to the payment of the judgments in favor of said plaintiff (Prayer 6).

8. The H. R. Howenstein Company answered the
35 said bill and denied the averments thereof. If that litigation is to proceed at all, it will probably have to go to final hearing many months hence.

9. J. Barrett Carter intervened in said equity suit, aforesaid, on or about November 22, 1934, and claimed therein that he had recovered judgments on the law side of the Supreme Court of the District of Columbia on September 19, 1933, against Herman R. Howenstein, in the sums of \$32,000 and interest and \$10,000 and interest respectively; that writs of fieri facias had been issued on said judgments and returned "nulla bona" and he prayed in like manner as the said Anna S. Sabin, as aforesaid.

10. Petitioner avers that all of the property of the bankrupt, by virtue of the adjudication, has vested in the trus-

tee in bankruptcy and that his title is paramount and exclusive and that the possession of the court of bankruptcy cannot be affected by proceedings in any other courts, otherwise, a chaotic condition will arise in which neither title nor possession can be passed.

Wherefore, petitioner prays—

1. That necessary rules and process be issued against the said Anna S. Sabin and all others concerned.

2. That the parcels of real estate described in paragraph four hereof, upon which the trustee has an offer of \$2,500 aforesaid, be sold, free and clear of incumbrance and that the lien, if any, of said Anna S. Sabin and J. Barrett Carter, on said parcels of real estate, be transferred to the fund derived from the sale of said real estate.

3. That the necessary notices be given to creditors under the bankruptcy act, with respect to the sale of said real estate.

4. That the said Anna S. Sabin and J. Barrett
36 Carter and each of them and their and each of their agents and attorneys be restrained and enjoined from asserting any lien in said equity cause to the real estate owned by the bankrupt, herein set forth.

5. That said Anna S. Sabin and J. Barrett Carter be restrained and enjoined from proceeding with said equity suit, in so far as they and each of them claims a lien upon the real estate owned by the bankrupt and that they and each of them be authorized and directed to assert such lien as they or either of them may have, if any, against said real estate in the bankruptcy court and not elsewhere.

6. For such further and other relief as the nature of the case may require and to the court seem meet and just.

JOHN A. REILLY,
Trustee.

H. WINSHIP WHEATLEY,
1010 Vermont Ave., N. W., Washington, D. C.,
Attorney for Trustee.

District of Columbia, ss:

John A. Reilly, being first duly sworn, on oath deposes and says that he has read the foregoing petition by him subscribed, knows the contents thereof and verily believes the facts stated therein to be true.

JOHN A. REILLY.

37 Subscribed and sworn to before me this 18th day
of March, 1935.

[SEAL.]

HAROLD A. MEEK,
Notary Public, D. C.

Service of copy of the above, together with copy of
Motion to Sell Property and copy of Motion for Injunc-
tion and copy of Points and Authorities in support of said
Motions, acknowledged this 18 day of March, 1935.

J. BARRETT CARTER.
W. GWYNN GARDINER.

38

EXHIBIT "A".

Lot.	Square.	Lot.	Square.
148	193	17	3566
807	245	19	3566
40	250	20	3566
48	531	21	3566
33	749	22	3566
34	749	24	3566
35	749	25	3566
38	749	26	3566
14	829	27	3566
801	916	37	3566
41	963	36	3566
106	1055	38	3566
26	1046	40 and 41	3566
118	1929	42	3566
50	1092	43 to 49 inc.	3566
80	2955	50	3566
83	2955	51	3566
255	3034	52	3566
114	3563	53	3566
116	3563	54	3566
3	3566	231	3034
4	3566	147	4008
5	3566	156	4008
6	3566	159	4008
8	3566	244	4060
9	3566	245	4060
10	3566	246	4060
11	3566	247	4060
12	3566	805	4060
16	3566		

39

Lot.	Square.	Lot.	Square.
1 to 32	4193	51	1092
All of	4192	52	1092
31	886	33	749
807	2978	28	2656
828	2937	70	1102
11	4229	38	4229
137	4510	53	4228
241	3031	99	4507
1 to 27 inc.	4194	110	1056
29 to 34 inc.	4194	83, part 6	937
All of Sq.	4195	Part 6	1000
5 and 6	4198	439	1300
260	3031	31	3566
186	5604	30	1046
51	3502	184	4059
110	1055	55	1092
36	4229	244	4060
44	1092	245	4060
11	4229	246	4060
22	4229	247	4060
23	4229	805	4060
24 to 31 inc.	4229	184	4059
30 to 36 inc. and		105	1015
802	4230	35	1091
56	1092	17	4288
50	1092		

40

(Copy.)

It is ordered that Clarence F. Donohoe, George R. Linkins and Adam A. Weschler of the City of Washington, District of Columbia, three disinterested persons, be and they are hereby appointed appraisers to appraise the real and personal property belonging to the estate of the said Bankrupt and set out in the schedules now on file in this court, and report their appraisal to the court, said appraisal to be made as soon as may be, and the appraisers to be duly sworn.

Witness my hand this 15th day of March, A. D. 1935.

(Signed)

FRED J. EDEN,
Referee in Bankruptcy.

CITY OF WASHINGTON,
District of Columbia, ss:

Personally appeared the within named appraisers and severally made oath that they will fully and fairly appraise the aforesaid property according to their best skill and judgment.

CLARENCE F. DONOHUE.
GEO. R. LINKINS.
ADAM A. WESCHLER.

Subscribed and sworn to before me this 15th day of March, A. D. 1935.

[NOTARIAL SEAL.] BERNARD L. BAUSERMAN,
Notary Public, District of Columbia.

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, having attended to the duties assigned us, and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:

Lots 32, 33, 34, 35 and 36, Square 4230, unimproved, on Bunker Hill Road, between Twentieth and Twenty First Streets, Northeast:

Lot 32—22.01 feet front by about 90.68 feet deep to 16-foot alley, 1987.15 sq. ft.

Lot 33—22.01 feet front by about 89.97 feet deep to 16-foot alley, 1971.53 sq. ft.

Lot 34—22.01 feet front by about 89.26 feet deep to 16-foot alley 1955.91 sq. ft.

Lot 35—22.01 feet front by about 88.55 feet deep to 16-foot alley 1940.29 sq. ft.

Lot 36—22.01 feet front by about 87.84 feet deep to 16-foot alley, 1924.67 sq. ft.

Appraisement, \$2,500.00.

41 In witness whereof we hereunto set our hands, at Washington, District of Columbia, this 15th day of March, A. D. 1935.

CLARENCE F. DONOHUE,
GEO. R. LINKINS,
ADAM A. WESCHLER,
Appraisers.

42 *Motion to Sell Real Property Known as Lots Thirty-two (32), Thirty-three (33), Thirty-four (34), Thirty-five (35), Thirty-six (36), in Square Four Thousand Two Hundred and Thirty (4230), Situated on the South Side of Bunker Hill Road, Between Twentieth and Twenty-first Street, North East, Free and Clear of Liens.*

Filed March 18, 1935.

Now comes the trustee in bankruptcy, by his attorney, and moves the court for leave to sell lots thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), and thirty-six (36), in Square four thousand, two hundred and thirty (4230), situated on the south side of Bunker Hill Road, between Twentieth and Twenty-first streets, North East, free and clear of liens and incumbrances, and that the liens claimed by Anna S. Sabin and J. Barrett Carter, in equity Cause No. 57936, if any, be transferred to the fund derived from the sale of said real estate.

H. WINSHIP WHEATLEY,
1010 Vermont Ave., N. W., Washington, D. C.,
Attorney for Trustee in Bankruptcy.

Mr. J. Barrett Carter,
Mr. W. Gwynn Gardiner,
Attorney for Anna S. Sabin:

43 Please take notice that the points to be submitted in support of this motion and the authorities to be used are attached hereto. The rules of the above named court require that if you oppose the granting of the foregoing motion, you shall, within five days from the day of service of a copy of this motion upon you, or such further time as the court may grant, or as the parties to this suit may agree upon, file in reply with the Clerk of said court, a statement of the points and authorities upon which you rely and serve a copy thereof upon counsel for the trustee.

H. WINSHIP WHEATLEY,
1010 Vermont Ave., N. W., Washington, D. C.,
Attorney for Trustee in Bankruptcy.

44 *Motion for Injunction.*

Filed Mar. 18, 1935.

Now comes the trustee in bankruptcy, by his attorney, and moves the court that Anna S. Sabin and J. Barrett

Carter and their and each of their agents and attorneys, be restrained and enjoined from asserting any lien in equity cause No. 57936 to real estate owned by the bankrupt and from proceeding with said equity suit, in so far as they and each of them claim a lien therein, against real estate owned by the bankrupt and that they and each of them be authorized and directed to assert such lien as they or either of them may have, if any, against said real estate in the bankruptcy court and not elsewhere.

H. WINSHIP WHEATLEY,
1010 Vermont Ave., N. W., Washington, D. C.,
Attorney for Trustee in Bankruptcy.

Mr. J. Barrett Carter,
Mr. W. Gwynn Gardiner,
Attorney for Anna S. Sabin:

Please take notice that the points to be submitted in support of this motion and the authorities to be used are attached hereto. The rules of the above named court
45 require that if you oppose the granting of the foregoing motion, you shall, within five days from the day of service of a copy of this motion upon you, or such further time as the court may grant, or as the parties to this suit may agree upon, filed in reply with the Clerk of said court a statement of the points and authorities upon which you rely and serve a copy thereof upon counsel for the trustee.

H. WINSHIP WHEATLEY,
1010 Vermont Ave., N. W., Washington, D. C.,
Attorney for Trustee in Bankruptcy.

46 *Answer to Rule and Motion to Show Cause on Petition of the Trustee in Bankruptcy to Sell Certain Pieces of Real Estate.*

Filed Mar. 22, 1935.

Comes now Anna S. Sabin, appearing in this cause specially for the answer to this rule and motion and for no other purpose, and answering said rule says:

(1) She admits the allegations of paragraph 1 for the purpose of this answer.

(2) Respondent is not advised as to the allegations of paragraph 2 and can therefore neither admit nor deny them.

(3) Respondent is advised that certain schedules were filed in the Bankruptcy Court and she is also advised from said schedules that they show this Company not to be insolvent and that no proceeding in bankruptcy should be instituted.

(4) Respondent has no knowledge of the allegations of paragraph 4, and can therefore neither admit nor deny them, but she denies the authority of the Bankruptcy Court to make such sale for she says she has a lien on all of this property, established by judgments obtained and executions issued thereon more than four months prior to the institution of the bankruptcy proceeding; and, further, that she had prior to the institution of said bankruptcy proceedings filed a creditor's bill to enforce the liens theretofore obtained by said judgments and execution thereon, and that there have been answers to said creditor's bill, petitions filed for the purpose of having a receiver appointed for the property of the bankrupt, answers filed to said petition asking for a receiver, and the date of hearing on
47 said petition and answer duly set by the Court, all prior to the filing of the petition for adjudication, and therefore this Bankruptcy Court has no jurisdiction over the subject matter of this proceeding since it was then in the possession of the Equity Court and that possession cannot be disturbed.

(5) Respondent has no knowledge or information as to the offer being made, but she is advised that the offer is not adequate, that the property is worth more than \$2,500, and can be sold for more than \$2,500 all cash, free and clear of any commissions.

Further answering paragraph 5, however, she says that it is immaterial as to whether such an offer has been had, or whether an appraisal was made, since the same is beyond the power and right of the Bankruptcy Court to sell this property, for the reasons set forth in this respondents answer to paragraph 4, that is to say, the jurisdiction of the Equity Court is exclusive in the premises.

(6) Answering paragraph 6, this respondent admits that an equity suit was filed on her behalf in the equity side of the Supreme Court of the District of Columbia, and that the same is numbered 57,936. She says that said proceed-

ing was a creditor's bill for the purpose of enforcing the judgments which she had obtained in the amounts of \$50,000 and \$15,000 respectively, which judgments were obtained on the 21st of October, 1933 as to \$50,000, and on February 27, 1934, as to \$15,000, and that said judgments drew interest, and that said judgments were obtained in the Supreme Court of the District of Columbia on the law side in the causes correctly stated in said paragraph 6. She admits that writs of fieri facias were issued on both judgments, and she states that said writs of fieri facias were issued according to the allegations of the bill and in fact on the 5th of October, 1934, as to both of said judgments, and that said writs were returned nulla bona.

48 (7) Respondent admits the allegations of paragraph 7 in so far as they are material to the question to be considered by the court on this rule. She states, however, that the bill alleges further facts, namely: That Howenstein also transferred to his wife all of the stock in the Howenstein Company; the petition for a receiver further recites the fact that there were only two stockholders, Katherine M. Howenstein, the wife of Herman R. Howenstein, having in her name on the books of the Company 996 shares, and that E. Catesby Rowzee has in his name 4 shares, making a total of 1,000 shares, which are the only shares issued or entitled to be issued, since the total capital stock of the company is 1,000 shares. It further alleges that there being only two stockholders, the corporation cannot function. In the papers filed in said equity cause and before the Equity Court, it is further alleged that there could be no adjudication in bankruptcy because there was no authority vested in any one to pass a resolution authorizing an adjudication, since there being only two stockholders, the requirements of the corporation laws of the District of Columbia (this corporation being incorporated under the laws of the District of Columbia) cannot be complied with, giving the corporation any power to function as a corporation, and that therefore any resolution or attempt to pass a resolution authorizing adjudication in bankruptcy was void and of no legal effect.

(8) The allegations of paragraph 8 have been covered by the answer of this respondent to paragraph 7, except that she denies the allegation therein that the final hearing in the equity cause will be many months hence. She says

that she is advised by her counsel that a final hearing may be had in an equity cause in about four months after it is calendared and ready for trial. She is advised by her counsel, however, that that is immaterial because the bankruptcy court has no jurisdiction, for the reasons set forth

above; and, further, that there is no lawful adjudication, since any attempt to pass a resolution directing or authorizing any officer to file a petition in bankruptcy was illegal and void in that this Company had not at the time said resolution was passed, or at any other time so far as we are able to ascertain, more than two stockholders, and therefore it could not have had more than two directors, or two officers, and that under the corporation laws of the District of Columbia, it is necessary to have at least three officers and directors before a corporation can function, and that all three of said officers and directors must be stockholders.

(9) This respondent admits that J. Barrett Carter intervened in said equity cause filed by this respondent, and she is advised that it was about the 22nd day of November, 1934, as alleged in the petition. She admits that the judgment of J. Barrett Carter was obtained in September, 1933, and that execution was issued on said judgment shortly thereafter, and that the execution was obtained nolla bona.

(10) Respondent denies upon advise of her counsel that this property is vested in the trustee in bankruptcy, or any of it; she denies that the title is paramount or exclusive in the Bankruptcy Court. She denies that the Bankruptcy Court has any jurisdiction over any of this property, and she denies that the Bankruptcy Court has any jurisdiction in the premises at all, as stated in the answers of this respondent to the several paragraphs herein.

Further answering this respondent says that she is advised by her counsel that the proper proceeding, if the trustee in bankruptcy has any rights, is for the trustee in bankruptcy to come into the equity court and claim any interest that he may have remaining after the liens have been satisfied, and that he has no right to attempt to proceed in the manner in which he has sought to proceed in this case, namely by a petition in the Bankruptcy Court.

And having fully answered, this respondent prays that the said petition *by* dismissed, and that the motion to sell said properties be denied.

ANNA S. SABIN,
Respondent.

W. GWYNN GARDINER,
I. IRWIN BOLOTIN,
JAMES M. EARNEST,
729 15th St., N. W.,
Attorneys for Respondent.

DISTRICT OF COLUMBIA, ss:

Anna S. Sabin, being first duly sworn, on oath deposes and says that she has read the foregoing answer by her subscribed and knows the contents thereof; that the matters and things therein stated as upon her own knowledge are true, and those matters and things therein stated as upon information and belief, she believes to be true.

ANNA S. SABIN.

Subscribed and sworn to before me this 22d day of March, 1935.

[NOTARIAL SEAL.]

MARTIN J. QUIGLEY,
Notary Public, D. C.

51 *Answer of J. Barrett Carter to Rule to Show Cause
on Petition of the Trustee in Bankruptcy to Sell
Certain Real Estate.*

Filed Mar. 22, 1935.

Comes now J. Barrett Carter, appearing in this cause specially to answer the said rule and for other purposes, and answering said rule says:

This respondent has read and given consideration to the answer of the respondent, Anna S. Sabin, to said rule to show cause, filed herein, and hereby adopts the same as the answer of this respondent, and prays that the petition of the trustee in bankruptcy be dismissed and the motion to sell certain real estate be denied.

J. BARRETT CARTER,
Respondent.

GEORGE C. WARNER, JR.,
1101 Denrike Building,
Attorney for Respondent, J. Barrett Carter.

52 DISTRICT OF COLUMBIA, ss:

J. Barrett Carter, being first duly sworn, on oath says that he has read the foregoing answer, by him subscribed, and knows the contents thereof, and that the matters and things therein stated upon personal knowledge are true, and those stated upon information and belief he verily believes to be true.

J. BARRETT CARTER.

Subscribed and sworn to before me, this 22nd day of March, 1935.

MABEL L. CLOPTON,
Notary Public, D. C.

53 *Supplement to Petition of Trustee for Leave to Sell Free of Incumbrance and to Restrain Lien Claimants.*

Filed Apr. 24, 1935.

The petition of John A. Reilly respectfully shows to the court as follows:

Since the filing of the petition herein, entitled "Petition of Trustee for Leave to Sell Free of Incumbrance and to Restrain Lien Claimants", the trustee has received from the Howenstein Realty Corporation an offer to purchase the lots described in said petition for \$3,250, with a brokerage commission to said Howenstein Realty Company of \$162.50. Said offer is attached hereto and marked Exhibit "A". The trustee submits the matter to the court for its directions, in accordance with the prayer of said petition, to which reference has been made above.

JOHN A. REILLY.

H. WINSHIP WHEATLEY,
1010 Vermont Ave., N. W., Washington, D. C.
Attorney for Trustee.

54 DISTRICT OF COLUMBIA, ss:

John A. Reilly, being first duly sworn, on oath deposes and says that he has read the foregoing petition by him subscribed, knows the contents thereof and verily believes the facts stated therein to be true.

JOHN A. REILLY.

Subscribed and sworn to before me this 20 day of April, 1935.

HAROLD A. MEEK,
Notary Public, D. C.

55

Sales Contract.

Washington, D. C., April 16, 1935.

Received from Thos. W. Sargent, a deposit of Two Hundred Dollars (\$200), to be applied as part payment of the purchase of Lot 32 to 36 inc., Square 4230, with improvements thereon known as No. (unimproved), in the District of Columbia, upon the following terms of sale:

Total price of property Thirty-two hundred and fifty Dollars (\$3,250).

The purchaser agrees to pay all cash at the date of conveyance, of which sum this deposit shall be a part.

The property is sold free of encumbrance except as aforesaid; title is to be good of record and in fact subject, however, to covenants, conditions and restrictions of record, if any; otherwise said deposit is to be returned and sale declared off at the option of the purchaser, unless the defects are of such character that they may readily be remedied by legal action, but the seller and agent are hereby expressly released from all liability for damages by reason of any defect in the title. In case legal steps are necessary to perfect the title, such action must be taken by the seller promptly at his own expense, whereupon the time herein specified for full settlement by the purchaser will thereby be extended for the period necessary for such prompt action.

Rents, taxes, water rent, insurance and interest on existing encumbrances, if any, and operating charges are to be adjusted to the date of the transfer. Taxes, general and special, are to be adjusted according to the certificate of taxes as issued by the Collector of Taxes of the District of Columbia, except that assessments for improvements completed prior to the date hereof, whether assessment therefor has been levied or not, shall be paid by the seller or allowance made therefor at the time of transfer.

Examination of title, tax certificate, conveyancing, notary fees and all recording charges, including those for

purchase money trust, if any, are to be at the cost of the purchaser; provided, however, that if upon examination the title should be found defective, the seller hereby agrees to pay the cost of the examination of the title and also to pay to the agent herein a commission hereinafter provided for just as though the sale had actually been consummated and all the terms of this contract complied with.

Within 60 days from the date of acceptance hereof by the owner, or as soon thereafter as a report on the title can be secured if promptly ordered, the seller and purchaser are required and agree to make full settlement in accordance with the terms hereof. If the purchaser shall fail so to do, the deposit herein provided for may be forfeited at the option of the seller, in which event the purchaser shall be relieved from further liability hereunder, or without forfeiting the said deposit the seller may avail himself of any legal or equitable rights which he may have under this contract. In the event of the forfeiture of the deposit, the seller shall allow the agent one-half thereof as a compensation for his services to him.

Settlement is to be made at the office of (Name of broker) Howenstein Realty Corp. or at the Title Company searching the title, and deposit with the Title Company or with (Name of broker) Howenstein Realty Corp. of the purchase money, the deed of conveyance for execution and such other papers as are required of either party by the terms of this contract shall be considered good and sufficient tender of performance of the terms hereof.

Seller agrees to execute the usual special warranty deed. Property is sold subject to an existing tenancy as follows: None. Seller agrees to give possession at time of settlement, and in the event he shall fail so to do he shall become and be thereafter a tenant by sufferance of the purchaser and hereby waives all notice to quit, as provided by the laws of the District of Columbia. (Strike one of the two foregoing sentences.)

The risk of loss or damage to said property by fire or other casualty until the deed of conveyance is recorded is assumed by the seller.

All notices of violations of Municipal orders or requirements noted or issued by any Department of the District of Columbia, or prosecutions in any of the courts of the District of Columbia on account thereof against or affecting the

property at the date of the settlement of this contract shall be complied with by the seller and the property conveyed free thereof. This provision shall survive the delivery of the deed hereunder.

The seller agrees to pay to (Name of broker) Howenstein Realty Corporation, his agent, the regular rate of commission fixed by the Washington Real Estate Board amounting to \$162.50 and the Title Company, or the Real Estate Office through which settlement is made, is hereby authorized and directed to make deduction of the aforesaid commission from the proceeds of the sale and to make payment thereof to the said agent. Entire deposit to be held by Howenstein Realty Corp. until settlement hereunder is made.

The principals to this contract mutually agree that it shall be binding upon their respective heirs, executors, administrators or assigns.

This contract made in triplicate, when ratified by the seller contains the final and entire agreement between the parties hereto and they shall not be bound by any terms, conditions, statements or representations, oral or written, not herein contained.

HOWENSTEIN REALTY CORP.,
By H. R. HOWENSTEIN,
Agent.

We, the undersigned, hereby ratify, accept and agree to the above memorandum of sale and acknowledge it to be our contract.

THOMAS W. SARGENT,
Purchaser.

4/16, 1935.

56 *Memorandum Overruling Motion for Injunction and
 Motion to Dismiss Petition to Vacate Order of
 Adjudication.*

Filed Jun. 14, 1935.

In this proceeding, the trustee of the bankrupt estate filed his petition and motion for an injunction to restrain Anna S. Sabin and J. Barrett Carter, plaintiffs in the case of Anna S. Sabin v. Herman R. Howenstein et al., Equity

No. 57,936, from asserting any lien therein against real estate owned by the bankrupt, and to direct them and each of them to assert such lien in the bankruptcy court.

Subsequently, Anna S. Sabin filed her petition and motion to vacate the order adjudicating the H. R. Howenstein Company a bankrupt, and to set aside the bankruptcy proceeding.

Answers have been filed.

The motion for an injunction must be overruled on the authority of *Straton v. New*, 283 U. S. 318, holding that "where a judgment which constitutes a lien on the debtor's real estate is recovered more than four months prior to the filing of the petition, the bankruptcy court is without jurisdiction to enjoin the prosecution of the creditor's action, instituted prior to the filing of a petition in bankruptcy, to bring about a judicial sale of the real estate."

Here the judgments which constitute the lien were obtained more than four months prior to the bankruptcy proceeding, and the bill was filed prior to the filing of the
57 petition in bankruptcy. It follows, also, that the prayer for the sale of the real estate described in the trustee's petition, free and clear of the incumbrance of the lien, must be denied.

The trustee and the bankrupt in their respective answers to the petition and motion of Anna S. Sabin, to vacate the order of adjudication, and to set aside the bankruptcy proceedings herein, challenge the sufficiency of the petition and move for a dismissal. This motion is overruled. The answers present issues of fact which should go to trial.

O. R. LUHRING,

Justice.

June 14, 1935.

58 *Order Denying Petition of John A. Reilly, Trustee, for Leave to Sell Free of Encumbrance, Certain Real Estate.*

Filed Jun. 21, 1935.

Upon consideration of the motion of John A. Reilly, Trustee in Bankruptcy herein, to sell free of encumbrance Lots 32, 33, 34, 35 and 36, in Square 4230, and it being shown to the court that subsequent thereto the trustee reported a higher offer for said lots, and after argument of counsel

1. That the court erred in denying the motion of the Trustee in Bankruptcy to restrain Anna S. Sabin and J. Barrett Carter from asserting a lien in equity cause No. 57,936 against real estate owned by the bankrupt and from proceeding with that equity suit insofar as they and each of them may have a claim against real estate owned by the bankrupt.

2. That the court erred in not requiring Anna S. Sabin and J. Barrett Carter to assert such lien as they or either of them might have, if any, against the real estate owned by the bankrupt in the bankruptcy court and not elsewhere, and in not transferring the lien, if any, which they
61 or either of them might have against said real estate to the bankruptcy court and require that the same be litigated there.

3. That the court erred in not enjoining said Anna S. Sabin and J. Barrett Carter, and each of them, from proceeding with said equity suit as prayed.

4. That the court erred in entering the order of June 21, 1935, denying the motion and petition of the trustee, directing that the court restrain Anna S. Sabin and J. Barrett Carter from asserting a lien in equity cause No. 57,936, and requiring that such lien, if any, be asserted in the bankruptcy court.

H. WINSHIP WHEATLEY,
*Attorney for John A. Reilly,
Trustee in Bankruptcy of
H. R. Howenstein Company.*

62

Assignments of Error.

Filed Jun. 27, 1935.

Now comes John A. Reilly, Trustee in Bankruptcy of H. R. Howenstein Company, and assigns errors as follows:

1. The court erred in denying the motion of the Trustee in Bankruptcy to restrain Anna S. Sabin and J. Barrett Carter from asserting a lien in equity cause No. 57,936 against real estate owned by the bankrupt, and from proceeding with that equity suit insofar as they and each of them may have a claim against real estate owned by the bankrupt.

2. The court erred in not requiring Anna S. Sabin and J. Barrett Carter to assert such lien as they or either of them might have, if any, against the real estate owned by the bankrupt in the bankruptcy court and not elsewhere, and in not transferring the lien, if any, which they or either of them might have against said real estate to the bankruptcy court and requiring that the same be litigated there.

3. The court erred in not enjoining said Anna S. Sabin and J. Barrett Carter, and each of them, from proceeding with said equity suit as prayed.

4. The court erred in entering the order of June 21, 1935, denying the motion and petition of the trustee, praying that the court restrain Anna S. Sabin and J. Barrett Carter from asserting a lien in equity cause No. 57,936 and requiring that such lien, if any, be asserted in the bankruptcy cause.

H. WINSHIP WHEATLEY,
Attorney for John A. Reilly,
Trustee in Bankruptcy.

64 *Notice of Appeal.*

Filed Jun. 27, 1935.

To: Mr. W. Gwynn Gardiner,
Attorney for Anna S. Sabin;
Mr. J. Barrett Carter,
Messrs. Tobriner, Graham, Brez & Tobriner,
Attorneys for H. R. Howenstein & Company:

Please take notice that John A. Reilly, Trustee in Bankruptcy of the H. R. Howenstein Company, hereby appeals from the order made herein on June 21, 1935, denying his petition and motion to restrain Anna S. Sabin and J. Barrett Carter from asserting a lien in equity cause No. 57,936 against real estate owned by the bankrupt, which order is entitled "Order Denying Injunction against Anna S. Sabin and J. Barrett Carter."

H. WINSHIP WHEATLEY,
Attorney for John A. Reilly,
Trustee in Bankruptcy of
H. R. Howenstein Company.

65 *Petition for Appeal to the United States Court of
 Appeals for the District of Columbia.*

Filed Jun. 27, 1935.

To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the District of Columbia:

Your petitioner, John A. Reilly, as Trustee in Bankruptcy
of H. R. Howenstein Company, conceiving himself ag-
grieved by the certain order entered on June 21, 1935, in the
above entitled proceedings, denying the motion and peti-
tion of the trustee to restrain Anna S. Sabin and J. Barrett
Carter from asserting a lien in equity cause No. 57,936,
against property owned by the bankrupt, which order is
entitled "Order Denying Injunction against Anna S. Sabin
and J. Barrett Carter", does hereby petition for an appeal
from said order to the United States Court of Appeals for
the District of Columbia, and prays that his appeal may
be allowed and that a citation may be granted directed to
Anna S. Sabin and J. Barrett Carter and H. R. Howenstein
Company, commanding them and each of them to appear
before the United States Court of Appeals for the District
of Columbia to do and receive that which may pertain to
justice to be done in the premises, and that a transcript of
the record and evidence in said proceedings, duly authenti-
cated, may be transmitted to the said United States
66 Court of Appeals for the District of Columbia.

JOHN A. REILLY,
Trustee in Bankruptcy of
H. R. Howenstein Company,
By H. WINSHIP WHEATLEY,
His Attorney.

The foregoing appeal is hereby allowed this 2nd day of
July, 1935, over the objection and exception of Anna S.
Sabin.

JOSEPH W. COX,
Justice.

67 *Exception by John A. Reilly, Trustee in Bankruptcy, to the Order of June 21, 1935, Denying the Motion of the Trustee to Sell Certain Lots Free and Clear of Encumbrance and to Transfer the Lien of Anna S. Sabin and J. Barrett Carter, If Any, to the Proceeds Derived From the Sale.*

Filed Jun. 27, 1935.

Now comes John A. Reilly, Trustee in Bankruptcy of H. R. Howenstein Company, and respectfully excepts to the order of June 21, 1935, denying the motion of the Trustee in Bankruptcy to sell certain lots free and clear of encumbrance and to transfer the lien of Anna S. Sabin and J. Barrett Carter, if any, to the proceeds derived therefrom, and for ground thereof says that under the law the motion of the Trustee should be granted in order that the said lands may be sold and the estate conserved.

1. That the Court erred in passing the order of June 21, 1935, denying the motion of the Trustee in Bankruptcy to sell certain lots free and clear of encumbrance and to transfer the lien of said Anna S. Sabin and J. Barrett Carter, if any, to the proceeds derived from the sale.

2. That the Court erred in not directing the trustee to sell the lots described in the Trustee's petition filed herein free and clear of encumbrance and to hold the same subject to the orders of the court.

68 3. That the Court erred in passing the said order of June 21, 1935.

H. WINSHIP WHEATLEY,
Attorney for John A. Reilly,
Trustee in Bankruptcy of
H. R. Howenstein Company.

69 *Assignments of Error on Order of June 21, 1935, Denying the Motion of the Trustee to Sell Certain Lots Free and Clear of Encumbrance and to Transfer the Lien of Anna S. Sabin and J. Barrett Carter, if Any, to the Proceeds Derived from the Sale.*

Filed June 27, 1935.

Now comes John A. Reilly, Trustee in Bankruptcy of H. R. Howenstein Company, appellant, and assigns errors as follows:

1. The court erred in passing the order of June 21, 1935, denying the motion of the Trustee in Bankruptcy to sell certain lots free and clear of encumbrance and to transfer the lien of said Anna S. Sabin and J. Barrett Carter, if any, to the proceeds derived from the sale.

2. The court erred in not directing the Trustee to sell the lots described in Trustee's petition filed herein free and clear of encumbrance and to hold the same subject to the orders of the court.

3. The court erred in passing the said order of June 21, 1935.

H. WINSHIP WHEATLEY,
*Attorney for John A. Reilly,
Trustee in Bankruptcy of
H. R. Howenstein Company.*

70

Notice of Appeal.

Filed Jun. 27, 1935.

To Mr. W. Gwynn Gardiner,
Attorney for Anna S. Sabin;
Mr. J. Barrett Carter,
Messrs. Tobriner, Graham, Brez & Tobriner,
Attorneys for H. R. Howenstein Company:

Please take notice that John A. Reilly, Trustee in Bankruptcy of the H. R. Howenstein Company, hereby appeals from the order made herein on June 21, 1935, denying his petition and motion to sell certain lots free and clear of encumbrance and to transfer the lien of said Anna S. Sabin and J. Barrett Carter, if any, to the proceeds derived from said sale, which order is entitled "Order Denying Petition of John A. Reilly, Trustee, for Leave to Sell, Free of Encumbrance, Certain Real Estate."

H. WINSHIP WHEATLEY,
*Attorney for John A. Reilly,
Trustee in Bankruptcy of
H. R. Howenstein Company.*

71 *Petition for Appeal to the United States Court of
 Appeals for the District of Columbia.*

Filed Jun. 27, 1935.

To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the District of Columbia:

Your petitioner, John A. Reilly, as Trustee in Bankruptcy of H. R. Howenstein Company, conceiving himself aggrieved by that certain order entered on June 21, 1935, in the above entitled proceedings, denying the motion and petition of the trustee to sell certain lots free and clear of encumbrance and to transfer the lien of said Anna S. Sabin and J. Barrett Carter, if any, to the proceeds derived from said sale, which order is entitled "Order Denying Petition of John A. Reilly, Trustee, for leave to Sell, Free of Encumbrance, Certain Real Estate", does hereby petition for an appeal from said order to the United States Court of Appeals for the District of Columbia, and prays that his appeal may be allowed and that a citation may be granted directed to Anna S. Sabin and J. Barrett Carter and H. R. Howenstein Company, commanding them and each of them to appear before the United States Court of Appeals for the District of Columbia to do and receive that which may pertain to justice to be done in the premises, and that a transcript of the record and evidence in said proceedings, duly authenticated, may be transmitted to the said United States Court of Appeals for the District of Columbia.

JOHN A. REILLY,
Trustee in Bankruptcy of
H. R. Howenstein Company,
By H. WINSHIP WHEATLEY,
His Attorney.

The foregoing appeal is hereby allowed this 2nd day of July, 1935, over the objection and exception of Anna S. Sabin.

JOSEPH W. COX,
Justice.

73 *Appeal from Order of June 21, 1935, Denying Petition to Restrain.*

Filed Jun. 27, 1935.

To Mr. W. Gwynn Gardiner,
Attorney for Anna S. Sabin;
Mr. J. Barrett Carter,
Messrs. Tobriner, Graham, Brez & Tobriner,
Attorneys for H. R. Howenstein Company.

Attached hereto please find the following:

1. Assignments of Error on Order of June 21, 1935, denying the petition of the trustee to restrain Anna S. Sabin and J. Barrett Carter from asserting a lien in equity cause No. 57,936 against real estate owned by the bankrupt, which order was entitled "Order Denying Injunction Against Anna S. Sabin and J. Barrett Carter".
2. Notice of Appeal from said order.
3. Petition for Appeal.

You will please take notice that I shall present these matters to the court on July 2nd, 1935, at ten o'clock A. M., and ask that the foregoing appeal may be noted and allowed. The matter will be presented to Mr. Justice Luhning if he is available, otherwise the Motion Judge.

H. WINSHIP WHEATLEY,
Attorney for John A. Reilly,
Trustee in Bankruptcy of
H. R. Howenstein Company.

74 *Appeal from Order of June 21, 1935, Denying Motion to Sell.*

Filed Jun. 27, 1935.

To Mr. W. Gwynn Gardiner,
Attorney for Anna S. Sabin;
Mr. J. Barrett Carter,
Messrs. Tobriner, Graham, Brez & Tobriner,
Attorneys for H. R. Howenstein Company.

Attached hereto please find the following:

1. Assignments of Error on Order of June 21, 1935, denying the motion of the trustee to sell certain lots free

and clear of encumbrance and to transfer the lien of Anna S. Sabin and J. Barrett Carter, if any, to the proceeds derived from the sale, which order was entitled "Order Denying Petition of John A. Reilly, for Leave to Sell, Free of Encumbrance, Certain Real Estate".

2. Notice of Appeal from said order.

3. Petition for Appeal.

You will please take notice that I shall present these matters to the court on July 2nd, 1935, at ten o'clock A. M., and ask that the foregoing appeal may be noted and allowed. The matter will be presented to Mr. Justice Luhring if he is available, otherwise to the Motions Judge.

H. WINSHIP WHEATLEY,

*Attorney for John A. Reilly,
Trustee in Bankruptcy of
H. R. Howenstein Company.*

75 *Motion to Dismiss Petitions for Appeal.*

Filed Jul. 2, 1935.

Comes now Anna S. Sabin, by her attorneys, and moves this Court to dismiss the petitions and proceedings for appeal in the above entitled cause and for reasons therefor states:

1. That this Court has no jurisdiction to grant said appeals.

2. That it appears that the trustee in bankruptcy has filed this appeal under section 24-a of the Bankruptcy Act, together with a petition for an appeal under Section 24-B of the Bankruptcy Act, which petition was filed simultaneously with the instant petitions in the Court of Appeals.

3. That the remedy of the trustee in bankruptcy, if any, in this cause is under Section 24-B of the Bankruptcy Act.

4. That it does not appear that the orders complained of herein present any question of fact to be considered under section 24-A of the Bankruptcy Act.

5. That it does not appear that the said orders complained of are final or in the nature of final orders.

6. That it appears that the orders complained of are interlocutory.

7. That it appears that the orders complained of were issued in a "proceeding" in bankruptcy rather than in "controversies arising in bankruptcy proceedings."

W. GWYNN GARDINER,
I. IRWIN BOLOTIN,
729 15th St., N. W.,
Attorneys for Anna S. Sabin.

76

Order Noting Appeal.

Filed July 2, 1935.

* * * * *

John A. Reilly, trustee in bankruptcy of H. R. Howenstein Company, in open court, this 2d day of July, 1935, appeals from the orders entered herein on June 21, 1935 entitled, "Order Denying Injunction Against Anna S. Sabin and J. Barrett Carter" and "Order Denying Petition of John A. Reilly, Trustee, for Leave to Sell, Free of Encumbrance, Certain Real Estate," and the Motions to Dismiss the said appeals are hereby overruled and exceptions are hereby noted by counsel for Anna S. Sabin and J. B. Carter to the overruling of said Motions to Dismiss.

JOSEPH W. COX,
Justice.

77 The President of the United States of America to Anna S. Sabin, J. Barrett Carter, H. R. Howenstein Company, a Corporation, and Leo. N. McGuire, Trustee in Bankruptcy of H. R. Howenstein, individually, Greeting:

You are hereby cited and admonished to be and appear at a United States Court of Appeals for the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to appeals noted in the Supreme Court of the District of Columbia, on July 2, 1935, July 30, 1935, wherein John A. Reilly, Trustee in Bankruptcy of H. R. Howenstein Company, a Corporation, is appellant, and you are appellees, to show cause, if any there be, why the Decree rendered against the said appellant should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alfred A. Wheat, Chief Justice of the Supreme Court of the District of Columbia, this 30th day of July, in the year of our Lord one thousand nine hundred and thirty-five.

[Seal, Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,

Clerk.

By H. B. DEITZBAUGH,

Assistant Clerk.

Service of the above citation accepted this 30th day of July, 1935.

J. BARRETT CARTER,

Appellee.

TOBRINER, GRAHAM, BREZ &

TOBRINER,

By SELIG C. BREZ,

Attys. for H. R. Howenstein

Company, Inc.

LEO N. McGUIRE,

Trustee in Bankruptcy of

H. R. Howenstein.

W. GWYNN GARDINER,

By I. BOLOTIN,

Atty. for Anna S. Sabin.

78 United States Court of Appeals for the District of
Columbia.

April Term, 1935.

No. 2464 Original.

Bankruptcy No. 3184.

In re: H. R. Howenstein Company, a Bankrupt.

On consideration of the petition filed in the above entitled cause by John A. Reilly, Trustee in Bankruptcy of H. R. Howenstein Company, for the allowance of an appeal under Section 24 (b) of the Bankruptcy Act from two orders of the Supreme Court of the District of Columbia entered therein June 21, 1935, and of the answer to said petition filed by Anna S. Sabin, respondent,

It is ordered by the Court that the petition be and it is hereby granted and the appeal allowed as prayed, the same to come up on the record with the general appeal taken under Section 24 (a) of the Bankruptcy Act.

Per MR. CHIEF JUSTICE MARTIN.

July 29, 1935.

A true copy—Test:

HENRY W. HODGES,
Clerk.

By MONCURE BURKE,
Deputy Clerk.

Filed Jul. 30, 1935.

79

Designation of Record.

Filed Jul. 6, 1935.

The Clerk will please include in the record the following:

1. Petition in bankruptcy filed February 23, 1935.
2. Order of adjudication of bankruptcy passed February 23, 1935.
3. Bankruptcy Schedules filed March 2, 1935.
4. Certification and election of John A. Reilly as trustee.
5. Order approving Bond of Trustee.
6. Order March 15, 1935, authorizing employment of counsel by Trustee.
7. Petition of Trustee for Leave to Sell Free of Incumbrance and to Restrain Lien Claimants, filed March 18, 1935.
8. Supplement to Petition of Trustee for Leave to Sell, etc., filed April 24, 1935.
9. Motion for Injunction, filed March 18, 1935.
10. Motion to Sell Lots 32, etc., Free and Clear of Lien, etc., filed March 18, 1935.
11. Answer by Anna S. Sabin to Rule and Motion on Petition of Trustee to Sell, etc., filed March 22, 1935.
- 80 12. Answer of J. Barrett Carter to Motion, filed March 22, 1935.
13. Opinion of Court, filed June 14, 1935.
14. Order of June 21, Denying Petition of Trustee for Leave to Sell Free of Incumbrance.
15. Order of June 21, 1935, Denying Injunction.

16. Exceptions of John A. Reilly, Trustee, to Order of June 21, 1935, to Restrain, etc., filed June 27, 1935.

17. Assignment of Errors on Order of June 21, 1935, Denying Motion to Restrain, filed June 27, 1935.

18. Notice of Appeal from Order Denying Injunction, etc., filed June 27, 1935.

19. Petition for Appeal from Order Denying Injunction, filed June 27, 1935, and Order of Court thereon dated July 2, 1935.

20. Exception of Trustee to Order of June 21, 1935, Denying Motion to Sell Free and Clear, etc., filed June 27, 1935.

21. Assignment of Errors on Order of June 21, 1935, Denying Motion to Sell, etc., filed June 27, 1935.

22. Notice of Appeal from Order Denying Leave to Sell, filed June 27, 1935.

23. Petition for Appeal from Order Denying Leave to Sell, etc., filed June 27, 1935, and Order of Court thereon dated July 2, 1935.

24. Motion to Dismiss Petition for Appeal, filed July 2, 1935.

25. Order July 2, 1935, noting appeal.

26. This designation.

H. WINSHIP WHEATLEY,
*Attorney for John A. Reilly,
Trustee in Bankruptcy for
H. R. Howenstein Company.*

Service of copy of the above acknowledged this 3 day of July, 1935.

TOBRINER, GRAHAM, BREZ
& TOBRINER,
By F. S. GRAHAM.
GEORGE C. WARNER, JR.,
Atty. for J. Barrett Carter.
W. GWYNN GARDINER,
Attorney for Anna S. Sabin.
JOHN S. HAMILTON,
*Atty. for Leo N. McGuire,
Trustee in B'k'y of H. R. Howenstein.*

Further Designation of Record.

Filed Jul. 30, 1935.

The Clerk of the Court will please include in the transcript of record in this case the following:

1. Order of the Court of Appeals allowing the appeal under Section 24-b of the Bankruptcy Act.

2. Citation on Appeal from the two orders of June 21, 1935.

H. WINSHIP WHEATLEY,
1010 Vermont Ave., N. W., Washington, D. C.,
*Attorney for Trustee in Bankruptcy
of H. R. Howenstein Company.*

82 In the Supreme Court of the District of Columbia,
Holding an Equity Court.

Equity No. 57936.

ANNA S. SABIN, 3200 Garfield Street, N. W., Plaintiff,
vs.

- 1 HERMAN R. HOWENSTEIN, 1315 H Street, N. W.,
- 2 KATHERINE M. HOWENSTEIN, 1315 H Street, N. W.,
- 3 H. R. HOWENSTEIN Co., a Body Corporate, 1315 H Street, N. W.,
- 4 E. CATESBY ROWZEE, 1315 H Street N. W.,
- 5 AMERICAN SECURITY & TRUST COMPANY, a Body Corporate, 15th and Pennsylvania Ave., N. W.,
- 6 RIGGS NATIONAL BANK, a Body Corporate, 1503 Pennsylvania Ave., N. W.,
- 7 SECOND NATIONAL BANK, a Body Corporate, 509 7th Street, N. W.,
- 8 LLOYD H. JOHNSON, and
- 9 FLORENCE P. JOHNSON, 112 U St., N. E.

Judgment Creditor's Bill.

Filed Nov. 10, 1934.

The Bill of Complaint of the plaintiff herein respectfully shows to this Honorable Court as follows:

1. That the plaintiff is a citizen of the United States and a resident of the District of Columbia and brings this suit in her own right.

2. That the defendant, Herman R. Howenstein, is a citizen of the United States, a resident of the District of Columbia, and is sued as the judgment debtor and as is hereafter more fully set forth.

83 3. That the defendant, Katherine M. Howenstein, is a citizen of the United States, a resident of the District of Columbia, and is sued as the wife of the defendant Herman R. Howenstein, and as the vice-president of the defendant corporation H. R. Howenstein Co., and as the person in whose name the defendant Herman R. Howenstein holds certain parcels of real estate hereinafter more fully described, and as the holder and transferee of nine hundred ninety-six (996) shares of capital stock in the defendant corporation, H. R. Howenstein Company, or as the person in whose name the defendant Herman R. Howenstein holds said 996 shares of capital stock in the said defendant corporation H. R. Howenstein Company, and for the purpose of discovery, and as is hereinafter more fully set forth.

4. That the defendant corporation, H. R. Howenstein Company is a corporation purported to have been organized and existing under and by virtue of the laws of the District of Columbia, and which has its principal office and is doing business in the District of Columbia, and is sued as such corporation, and as the straw party by which the defendant Herman R. Howenstein holds title to certain parcels of real estate located in the District of Columbia, and by which the defendant Herman R. Howenstein holds title or an equity or has an equitable interest in certain deeds of trust, deeds of trust notes, accounts receivable and other assets, and for the purpose of discovery, and as is hereinafter more fully set forth.

5. That the defendant E. Catesby Rowzee is a citizen of the United States and a resident of the District of Columbia and is sued in his own right and as the president and treasurer of the defendant, H. R. Howenstein Co., and as the transferee of four shares of stock of the defendant H. R. Howenstein Co. and as the party in whose name the defendant Herman R. Howenstein holds said four shares of capital stock, and for the purpose of discovery.

84 6. That the defendant American Security & Trust Company is a body corporate, maintaining an office and doing a general banking business in the District of

Columbia, and is sued in its own right as a corporation and as the holder, or pledgee, or lienor, or collector, of certain deeds of trust, deeds of trust notes and other securities, accounts receivable and other assets belonging to and owned in law or equity by the defendants Herman R. Howenstein and H. R. Howenstein Co., or owned by said defendant Herman R. Howenstein but held by him in the name of the defendant corporation H. R. Howenstein Co. and the defendants Katherine M. Howenstein and E. Catesby Rowzee, or in which deeds of trust, deeds of trust notes, accounts receivable and other assets, the said defendants Herman R. Howenstein and H. R. Howenstein Co. have an equity or equitable interest, and for the purpose of discovery.

7. That the defendant The Riggs National Bank, is a body corporate, maintaining an office and doing a general banking business in the District of Columbia, and is sued in its own right as a corporation and as the holder, or pledgee, or lienor, or collector, of certain deeds of trust, deeds of trust notes, and other securities, accounts receivable and other assets belonging to and owned in law or equity by the defendant Herman R. Howenstein and H. R. Howenstein Co., or owned by said defendant Herman R. Howenstein but held by him in the name of the defendant corporation H. R. Howenstein Co. and the defendants Katherine M. Howenstein and E. Catesby Rowzee, or in which deeds of trust, deeds of trust notes, accounts receivable and other assets, the said defendants Herman R. Howenstein and H. R. Howenstein Co. have an equity or equitable interest, and for the purpose of discovery.

8. That the defendant the Second National Bank, is a body corporate, maintaining an office and doing a general banking business in the District of Columbia, and is
85 sued in its own right as a corporation and as the holder, or pledgee, or lienor, or collector, of certain deeds of trust, deeds of trust notes, and other securities, accounts receivable and other assets belonging to and owned in law or equity by the defendant Herman R. Howenstein and H. R. Howenstein Co., or owned by said defendant Herman R. Howenstein but held by him in the name of the defendant corporation H. R. Howenstein Co. and the defendants Katherine M. Howenstein and E. Catesby Rowzee, or in which deeds of trust, deeds of trust

notes, accounts receivable and other assets, the said defendants Herman R. Howenstein and H. R. Howenstein Co. have an equity or equitable interest, and for the purpose of discovery.

9. That the defendants Lloyd H. Johnson and Florence P. Johnson are citizens of the United States, Residents of the District of Columbia, and are sued as the joint purchasers of lot 83, square 3535, from the defendants Herman R. Howenstein and Katherine M. Howenstein, after said real estate had become impressed with a judgment lien in favor of the plaintiff, and as is hereinafter more fully set forth, and for the purpose of discovery.

10. That heretofore, to wit, May 2, 1927, the defendant Herman R. Howenstein executed, or caused to be executed, a certain promissory note in the amount of Fifty Thousand (\$50,000.00) Dollars, and secured by a second lien on property known as the Embassy Apartments, located at 1613 Harvard Street, N. W., in the District of Columbia, which said note was endorsed by, and the payment of principal and interest was guaranteed by the said Herman R. Howenstein. That prior to September, 1927, this said note so issued, endorsed and guaranteed by Herman R. Howenstein, was, in the usual course of business, acquired by one Emanuel Speich, who held and owned the same at the time of his death, which death occurred in September, 1927; that

86 under and by virtue of a will made by the said Emanuel Speich the said note became and was the property of his wife, and widow, Cordelia Speich, and that said Cordelia Speich as the owner and holder of said note so acquired, received and was paid the interest on said note up to the time of her death, which death occurred in July, 1929, she being the owner and holder of said note at the time of her death. That said Cordelia died intestate, but left your plaintiff Anna S. Sabin, the plaintiff in this suit, as her only child and heir at law, and as such your plaintiff, Anna S. Sabin became and was the owner of said note, and held the said note as the owner, and received the interest on same until May, 1932.

That after the said note was made, executed and delivered by the defendant Herman R. Howenstein, he sold the said property securing said note, and in May, 1932, the purchaser of said property having defaulted in the payment

of interest and taxes on said property, the said defendant Herman R. Howenstein, being the endorser and guarantor on the said trust secured on said property, and being the owner of a part of the second trust, of which the \$50,000 was a part, requested of your plaintiff that he be permitted to advertise and sell the property under the second trust for his protection and for the protection of your plaintiff, and in that manner he would acquire the title to said property again, and would immediately re-establish the said obligation then existing by issuing a new trust on said property in the same amount as the old trust, payable on the same terms as the old trust, and would deliver the new note so secured and endorsed and guaranteed by the said Herman R. Howenstein to your plaintiff, and that in consideration of same she delivered up to the said Herman R. Howenstein her said \$50,000 note above described, and accepted in lieu thereof a note for \$50,000 dated May 25, 1932, which said new note so issued, endorsed, and the payment of principal and interest on same guaranteed by Herman R.

Howenstein, was delivered to your plaintiff, and the
87 interest on same was paid to your plaintiff for six months until November 25, 1932, when default was had on the payment of interest on said note; and that on, to wit, September 21, 1933, the plaintiff filed a suit in the Supreme Court of the District of Columbia, the same being law cause No. 83,220, to recover of the defendant Herman R. Howenstein the sum of \$50,000 with interest and costs, as evidenced by the aforesaid promissory note of the Embassy Apartment Co., which was the identical note hereinbefore described as having been delivered to your plaintiff in May, 1932, and endorsed and guaranteed by Herman R. Howenstein; and that thereafter on, to wit, October 21, 1933, the plaintiff obtained a judgment in the Supreme Court of the District of Columbia against the defendant Herman R. Howenstein, in the sum of \$50,000, together with interest from the 25th day of November, 1932, and costs of suit.

11. And that on January 24, 1934, the plaintiff filed another suit in the Supreme Court of the District of Columbia, same being law cause No. 83,640, to recover of the defendant Herman R. Howenstein the sum of \$15,000 and interest and costs, as evidenced by the fifteen promissory notes of the High View Construction Co., each in the amount of \$1,000, all dated January 11, 1926, and payable to the order of one A. L. Weber, all of which were endorsed by the defendant

Herman R. Howenstein, and the payment of principal and interest was guaranteed by said Herman R. Howenstein, and of which promissory notes the plaintiff was the holder; and that thereafter on, to wit, February 27, 1934, the plaintiff obtained a judgment in the Supreme Court of the District of Columbia against the defendant Herman R. Howenstein in the amount of \$15,000 and interest from the 11th day of January, 1933, together with costs of suit; and that both of the aforesaid judgments have not been set aside, vacated or appealed from.

12. That on, to wit, the 5th day of October, 1934, the plaintiff caused a writ of fieri facias to be issued by
88 the Clerk's office of this Honorable Court in said law cause No. 83,220, and also a writ of fieri facias to be issued in said law cause No. 83,640; and that the said writs of fieri facias were delivered to the United States Marshal in and for the District of Columbia, and were thereafter returned by the said United States Marshal "nulla bona".

13. That the plaintiff is informed and believes, and therefore avers, that about, to wit, November 1898, the defendant Herman R. Howenstein established and became engaged in a real estate and building business in the City of Washington, District of Columbia; and that the said real estate and building business was incorporated by the said defendant Herman R. Howenstein about, to wit, December 1902, under the name of H. R. Howenstein Co. and under and by virtue of the laws of the District of Columbia; and the plaintiff further charges upon information and belief that the said defendant, Herman R. Howenstein, turned over all of his assets to the said defendant corporation, H. R. Howenstein Co., without receiving any valuable or other consideration therefor, and that the said defendant Herman R. Howenstein merely continued to operate his former business, which was not incorporated, under the new corporate name of H. R. Howenstein Co., and that although the said defendant Herman R. Howenstein incorporated his said real estate and building business, he nevertheless continued in fact as the sole managing head, director, and the sole owner of the said defendant corporation, H. R. Howenstein Co., and he is at the present time in fact the sole managing head, director, and practically the sole owner of the said corporation, H. R. Howenstein Co. The plaintiff is

informed and believes, and therefore avers, that the defendant corporation, H. R. Howenstein Co., was organized solely for the purpose of taking over and continuing the business of Herman R. Howenstein, and in order to defraud, hinder and delay the creditors of the said defendant Herman R. Howenstein, and in order to avoid any obligations which the said defendant Herman R. Howenstein might incur or which had then been incurred; and that the said defendant corporation took over and accepted all of the assets of the defendant Herman R. Howenstein's business, not incorporated, without giving any valuable or other consideration therefor.

14. That the plaintiff is informed and believes, and therefore avers, that the capital stock of the defendant corporation H. R. Howenstein Co. consists of one thousand shares, of which the said defendant Herman R. Howenstein owned 996 shares up to about to wit, 1930 or 1931, when the said defendant Herman R. Howenstein, transferred the said 996 shares of stock to his wife, the defendant Katherine M. Howenstein, and that the said defendant Katherine M. Howenstein still holds legal title to the said 996 shares of stock; the plaintiff further charges upon information and belief that the said transfer of 996 shares of stock from the defendant Herman R. Howenstein to the defendant Katherine M. Howenstein was made without any valuable or other consideration whatsoever, and was made in order to defraud, hinder and delay the existing creditors of the said defendant Herman R. Howenstein, and also to defraud, hinder and delay those whom the said defendants Herman R. Howenstein and Katherine M. Howenstein knew, or had reason to know, would in the near future become creditors of the said defendant Herman R. Howenstein, and the said transfer of the 996 shares of stock left the defendant Herman R. Howenstein insolvent and execution-proof, and was made solely in an effort to place the assets and the equity of the defendant Herman R. Howenstein in the said shares of stock beyond the reach of this plaintiff and other existing creditors of the said Herman R. Howenstein, and that the said transfer is therefore fraudulent and void insofar as this plaintiff is concerned; and that at the time of the aforesaid transfer of the 996 shares of stock from the defendant, Herman R. Howenstein, to his wife, the defendant Katherine M. Howenstein, these said defendants well knew and understood the responsi-

bilities and liabilities which had been assumed by the defendant Herman R. Howenstein, as an individual, on various and sundry promissory notes including the promissory notes hereinbefore referred to, and other obligations; but notwithstanding said knowledge and facts, the defendant Herman R. Howenstein, in order to avoid said obligations and responsibilities and in order to dispose of all of his assets and in order to be execution-proof, and in order to defraud, hinder and delay his existing creditors, including the plaintiff, and those who in the near future he knew or had reason to know would become his creditors, did transfer the said 996 shares of stock of the defendant corporation to his wife, the defendant Katherine M. Howenstein, who accepted the said 996 shares of stock without giving any valuable or other consideration for the same, and accepted the said stock with full knowledge of the intent of her husband to avoid his obligations and responsibilities, and to defraud, hinder and delay his existing and future creditors, and that she further accepted said 996 shares of stock solely for the purpose of aiding her husband in his attempt to defraud, hinder and delay his existing and future creditors; that as a result of said fraudulent scheme and transfer of the said 996 shares of stock, the defendant Herman R. Howenstein divested himself of and conveyed away assets of the approximate value of one million dollars without receiving even one cent as consideration therefor, and the defendant Katherine M. Howenstein received said assets of the approximate value of one million dollars without giving any valuable or other consideration whatsoever therefor.

15. That the plaintiff is informed and believes and therefore avers, that the defendant Herman R. Howenstein was president and treasurer of the said defendant corporation, H. R. Howenstein Co., up to about, to wit, 1933, and that the defendant E. Catesby Rowzee was secretary of said defendant corporation up to said date; and that

91 during, to wit, 1933, the defendant corporation, H. R. Howenstein Co., was reorganized, and that although the defendant Herman R. Howenstein was constituted its secretary and E. Catesby Rowzee was made president and treasurer, and the defendant Katherine M. Howenstein was constituted its vice-president, nevertheless, in fact, the defendant Herman R. Howenstein continued and remained, and still is, the sole manager and sole owner of said cor-

poration, and the defendants E. Catesby Rowzee and Katherine M. Howenstein are merely straw parties used by the defendant Herman R. Howenstein in an attempt and effort to comply with the corporate laws of the District of Columbia, and that they have no voice and take no active part in the management or direction of the affairs or policies of the defendant corporation, H. R. Howenstein Co.

15a. The plaintiff is informed and believes and therefore avers, that defendant Herman R. Howenstein is the owner of and holds title in his name and in the name of his wife, the defendant, Katherine M. Howenstein, to the real property known as 4704 Blagden Avenue, Northwest, in the city of Washington, District of Columbia.

16. The plaintiff is informed and believes, and therefore avers, that as a part of the said fraudulent scheme and intent to divest himself of all his assets, and in order to defraud, hinder and delay his existing and future creditors, the defendant Herman R. Howenstein conveyed certain real property to the defendant corporation, H. R. Howenstein Co., without receiving any valuable or any other consideration therefor; and that the defendant Herman R. Howenstein is still the owner of certain parcels of real estate located in the District of Columbia, which said real estate is being held for him in the name of the defendant corporation, H. R. Howenstein Co., and said real estate being as follows:

Lot 148, Square 193; Lot 807, Square 245; Lot 40,
 92 Square 250; Lot 46, Square 531; Lot 33, Square 749;
 Lot 34, Square 749; Lot 35, Square 749; Lot 38,
 Square 749; Lot 14, Square 829; Lot 801, Square 916; Lot
 41, Square 963; Lot 106, Square 1055; Lot 26, Square 1046;
 Lot 118, Square 1929; Lot 50, Square 1092; Lot 80, Square
 2955; Lot 83, Square 2955; Lot 255, Square 3034; Lot 114,
 Square 3563; Lot 116, Square 3563; Lot 3, Square 3566; Lot
 4, Square 3566; Lot 5, Square 3566; Lot 6, Square 3566; Lot
 8, Square 3566; Lot 9, Square 3566; Lot 10, Square 3566;
 Lot 11, Square 3566; Lot 12, Square 3566; Lot 16, Square
 3566; Lot 17, Square 3566; Lot 19, Square 3566; Lot 20,
 Square 3566; Lot 21, Square 3566; Lot 22, Square 3566;
 Lot 24, Square 3566; Lot 25, Square 3566; Lot 26,
 93 Square 3566; Lot 27, Square 3566; Lot 37 Square
 3566; Lot 36, Square 3566; Lot 38, Square 3566;
 Lots 40 and 41, Square 3566; Lot 42, Square 3566;
 Lot- 43 to 49 incl., Square 3566; Lot 50, Square 3566;

Lot 51, Square 3566; Lot 52, Square 3566; Lot 53, Square 3566; Lot 54, Square 3566; Lot 231, Square 3034; Lot 147, Square 4008; Lot 156, Square 4008; Lot 159, Square 4008; Lot 244, Square 4060; Lot 245, Square 4060; Lot 246, Square 4060; Lot 247, Square 4060; Lot 805, Square 4060; Lots 1 to 32, Square 4193; All of Square 4192; Lot 31, Square 886; Lot 807, Square 2978; Lot 828, Square 2937; Lot 11, Square 4229; Lot 137, Square 4510; Lot 241, Square 3031; Lots 1 to 27 incl., Square 4194; Lots 29 to 34 incl., Square 4194; All of Square 4195; Lots 5 and 6, Square 4198; Lot 11, Square 4229; Lot 22, Square 4229; Lot 23, Square 4229; Lots 24 to 31 incl., Square 4229; Lots 30 to 36 incl. and 802 in Square 4230; Lot 56, Square 1092; Lot 50, Square 1092; Lot 51, Square 1092; Lot 52, Square 1092; Lot 33, Square 749; Lot 28, Square 2656; Lot 70, Square 1102; Lot 31, Square 3566; Lot 30, Square 1046; Lot 184, Square 4059; Lot 55, Square 1092; Lot 244, Square 4060; Lot 245, Square 4060; Lot 246, Square 4060; Lot 247, Square 4060; Lot 805, Square 4060; Lot 184, Square 4059; Lot 105, Square 1015; Lot 35, Square 1091; Lot 17, Square 4288; Lot 260, Square 3031; Lot 186, Square 5604; Lot 51, Square 3502; Lot 110, Square 1055; Lot 36, Square 4229; Lot 44, Square 1092; Lot 38, Square 4229; Lot 53, Square 4228; Lot 99, Square 4507; Lot 110, Square 1055; Lot 83, Part 6, Square 937; Lot, part 6, Square 1000; Lot 439, Square 1300.

17. That the plaintiff is informed and believes, and therefore avers, that the defendant Herman R. Howenstein has, in his name and in the names of the defendants H. R. Howenstein Co., Katherine M. Howenstein, E. Catesby Rowzee, and others, numerous accounts receivable, and a substantial equity or equitable interest in certain outstanding first, second, and other trust real estate notes, together with other intangible assets upon which no legal execution may be had; and has the legal or equitable title, or an equity, in the aforesaid Embassy Apartments; and the plaintiff further charges upon information and belief that certain of the said trust real estate notes, accounts receivable and other assets are in the possession and being held by the defendant Riggs National Bank, and the defendant Second National Bank, and the defendant American Security & Trust Company, subject to certain pledges or liens; and the plaintiff is advised, and being so advised says that

it will be necessary to have a receiver appointed to collect said accounts receivable, and to receive payments on said accounts and trust real estate notes when the same are made, and to apply the said payments towards the reduction of the aforesaid judgments, and that it will be necessary for the said receiver to sell the equity of the defendant Herman R. Howenstein, and of the defendant H. R. Howenstein Co. in the said trust real estate notes and the other assets belonging to said defendants in order to apply the proceeds of said sale towards the reduction of the aforesaid judgments; and that it will be further necessary for the said receiver to take over the real estate and other assets of the defendant corporation, H. R. Howenstein Co., and the 996 shares of capital stock held by the defendant Herman R. Howenstein in the name of the defendant Katherine M. Howenstein, and to wind up the affairs and business of the defendant corporation H. R. Howenstein Co., and to sell said real estate, shares of stock, and other assets, insofar as may be necessary to be applied towards the payment in full of the plaintiff's aforesaid judgments.

18. That the plaintiff further charges upon information and belief that there is at this time certain assets including large sums of money in the possession of the defendant Riggs National Bank, the defendant American Security & Trust Company, and the defendant Second National Bank, and in the possession of the defendants H. R. Howenstein Co., Katherine M. Howenstein and E. Catesby Rowzee, which assets and money are in law and equity the property of the defendant, Herman R. Howenstein, but are so shielded and concealed by the fraudulent transactions hereinabove referred to, that the plaintiff will not be able to reach said assets and money except by the aid of this court, the remedy of the plaintiff in this behalf not being plain, adequate and complete on the law side of this Court. And that as the result of the fraudulent transactions hereinabove referred to and after due inquiry, the plaintiff is unable to learn of any property owned by the defendant Herman R. Howenstein upon which she might levy and thus satisfy her aforesaid judgments.

19. That the plaintiff is informed and believes, and therefore avers, that the defendants Lloyd H. Johnson and Florence P. Johnson jointly, by deed dated January 2, 1934, acquired title to Lot 82 Square 3535, the same being a parcel

of land located in the District of Columbia, from the defendant Herman R. Howenstein, and this said conveyance was made and recorded subsequent to the time when this plaintiff obtained her judgments. And on information and belief, plaintiff charges that the said deed was given without consideration and was for the purpose of hindering and delaying creditors, including this plaintiff.

20. Plaintiff is advised and believes that she is
97 without remedy except in a court of equity and she
therefore prays the relief of the court of equity in
this cause.

Wherefore, premises considered, plaintiff prays:

1. That a subpoena issue out of this Honorable Court directed to the defendants and each of them, requiring them to answer the exigencies of this bill.

2. That a receiver be appointed in this cause to take over, manage and operate the properties, including the collection of rent of all of the properties enumerated in this bill, and to take over any notes, bonds, securities, or things of value in the possession of the defendant banks or trust companies or any of them above and beyond any lawful pledge or obligation due to the said banks or trust company, or any of the parties defendant herein, all pending the determination of said cause on final hearing.

3. That the defendants, Riggs National Bank, Second National Bank and American Security & Trust Company, and each of them, be required to discover fully and completely in their said answers all of the assets held by them, and if any of them be pledged, the amount of pledge, the amount of interest due on said pledged obligations, if any, and the value of the securities pledged, and if there be any securities in the possession of said defendants, or any of them, not pledged that they discover fully the value and character of said assets and the manner in which they were delivered to or came into the possession of the said defendants.

4. That this Honorable Court in accordance with Equity Rule 54 of this Court sign an appropriate order requiring the defendants, Riggs National Bank, Second National Bank, and American Security & Trust Company, and each of them, to answer under oath interrogatories that may be asked of them by way of discovery on the matters concerning the securities, or things of value in their possession, the

manner in which they were acquired, the amount of lien against them in favor of the said individual defendant answering, and what securities, if any, they hold not pledged, including all securities pledged or delivered to them or in their possession to the name of Herman R. Howenstein; H. R. Howenstein Co., Katherine M. Howenstein, or E. Catesby Rowzee.

5. That upon final hearing of this cause a decree may be entered herein setting aside and declaring of no legal effect the transfer of the properties and all of the properties herein enumerated and described from Herman R. Howenstein to the defendant H. R. Howenstein Co., or to any of the individual defendants, including the 996 shares of stock issued to and now in the name of the wife, the defendant Katherine M. Howenstein, and any stock issued and now in the name of any of the other defendants in said cause; and likewise all of the amounts of money, bonds, stocks, or things of value, found in the possession of the defendants, or pledged with any of the defendants in the name
98 of Herman R. Howenstein, H. R. Howenstein Co., Katherine M. Howenstein, E. Catesby Rowzee, or in the name of any of the other defendants, and that all of said properties, moneys, securities and stock be decreed to be subject to the payment of the judgments in favor of the plaintiff in this cause.

6. That upon final hearing of said cause the Court shall enter a decree decreeing the real estate and personal properties, of every nature, kind and description, now in the name of the H. R. Howenstein Co. to be in fact the property of the defendant Herman R. Howenstein, and that the same be decreed to be subject to the payment of the judgments in favor of the plaintiff in this cause.

7. That upon final hearing of said cause the Court shall enter a decree decreeing that the corporation is in fact not a corporation in law, but that the same is, was and always has been a thing set up and created by the defendant Herman R. Howenstein for the purpose of avoiding the obligations in existence and created by him prior to the formation of said corporation, and those then about to be incurred by him, and including the indebtedness representing the original obligations upon which the judgments were entered in favor of the plaintiff in this cause and against the defendant Herman R. Howenstein.

8. That the court decree upon final hearing that the 996 shares of stock issued to the defendant Katherine M. Howenstein by the H. R. Howenstein Co. be declared to be void as against the creditors of the defendant, including the plaintiff, in existence in fact at the time of, or prior to the issuance of said stock; or that the same be decreed to be held by the defendant Katherine M. Howenstein as trustee for Herman R. Howenstein; and that a decree be entered in like manner as against the four shares of stock issued to and standing in the name of E. Catesby Rowzee. And that the said stock, and all of said stock, be sold and the proceeds derived therefrom be applied to the payment of the said judgments in favor of the plaintiff in this cause.

9. And for such other, further and general relief as to the Court may seem just and proper to do full equity involving all of the matters and things to be determined in the pledges in this cause, and with full protection to all of the rights of all the parties in said cause.

ANNA S. SABIN,
Plaintiff.

W. GWYNN GARDINER,
I. IRWIN BOLOTIN,
729 15th St., N. W.,
Attorneys for Plaintiff.

99 DISTRICT OF COLUMBIA, ss:

Anna S. Sabin, being first duly sworn, on oath deposes and says that she has read the foregoing bill by her subscribed and knows the contents thereof; that the matters and things therein stated as of her own knowledge are true, and those matters and things therein stated upon information and belief, she believes to be true.

ANNA S. SABIN.

Subscribed and sworn to before me this 8th day of November, 1934.

JASON B. CAUKIN,
Notary Public, D. C.

100

Filed Nov. 22, 1934.

J. Barrett Carter, by leave of court first had and obtained, intervening herein as a party plaintiff, states as follows:

1. That he is a citizen of the United States and a resident of the District of Columbia and files this petition in his own right.

2. That on the 15th day of August, 1933, petitioner filed suit in the Supreme Court of the District of Columbia, same being Law Cause No. 83,073, to recover of the defendant Herman R. Howenstein the sum of Thirty-two Thousand Dollars (\$32,000.00), with interest from November 25, 1932, and costs, as evidenced by a promissory note of the Embassy Apartment Company in the sum of Thirty-two Thousand Dollars (\$32,000.00) dated the 25th day of May, 1932, payable to the order of Dorothy N. French, which said note was endorsed by the defendant Herman R. Howenstein, and the payment of principal and interest was guaranteed by the said Herman R. Howenstein, and of which promissory note the petitioner was the holder; and that thereafter, to-wit, the 19th day of September, 1933, your petitioner obtained a judgment in the Supreme Court of the District of Columbia against the defendant Herman R. Howenstein in the amount of Thirty-two Thousand Dollars (\$32,000.00), with interest from the 25th day of November, 1932, together with costs of suit; and that said judgment has not been set aside, vacated or appealed from.

3. That on, to-wit, the 18th day of August, 1933, petitioner filed another suit in the Supreme Court of the District of Columbia, same being Law Cause No. 83,085, to recover of the defendant Herman R. Howenstein the sum of Ten Thousand Dollars (\$10,000.00) and interest and costs, as evidenced by the ten (10) promissory notes of the Highview Construction Company each in the amount of One Thousand Dollars (\$1,000.00), all dated January 11, 1928, and payable to the order of one A. L. Weber, all of which were endorsed by the defendant Herman R. Howenstein and the payment of principal and interest was guaranteed by the said Herman R. Howenstein, and of which promissory notes your petitioner was the holder; and that thereafter, to-wit, on the 19th day of September, 1933, your petitioner obtained a judgment in the Supreme Court of the District of Columbia against the defendant Herman R. Howenstein in the amount of Ten Thousand Dollars (\$10,000.00) and interest from the 11th day of January, 1933, together with costs of suit; and that the afore-

said judgment has not been set aside, vacated or appealed from.

4. That on, to-wit, the 15th day of November, 1934, petitioner caused a writ of fieri facias to be issued by the Clerk's Office of this Honorable Court in said Law Cause No. 83,073, and also caused a writ of fieri facias to be issued in said Law Cause No. 83,085, and that both of the said writs of fieri facias were delivered to the United States Marshal in and for the District of Columbia, and were thereafter returned by the said United States Marshal "nulla bona".

5. That your petitioner incorporates by reference in this intervening petition paragraphs number 13 to 19, inclusive, of the petition of Anna S. Sabin heretofore filed in this cause.

6. That your petitioner is advised and believes that he is without remedy except in a court of equity and he therefore prays the relief of the court of equity in this cause.

Wherefore, premises considered, petitioner prays:

1. That he be joined as party plaintiff in this cause.

2. That a receiver be appointed in this cause to take over, manage and operate the properties, including the collection of rent of all of the properties enumerated and set forth in the original petition of Anna S. Sabin filed herein, and to take over any notes, bonds, securities, or things of value in the possession of the defendant banks or trust companies or any of them above and beyond any lawful pledge or obligation due to the said banks or trust company, or any of the parties defendant herein, all
103 pending the determination of said cause on final hearing.

3. That the defendants, Riggs National Bank(Second National Bank and American Security & Trust Company, and each of them, be required to discover fully and completely in their said answers all of the assets held by them, and if any of them be pledged, the amount of pledge, the amount of interest due on said pledged obligations, if any, and the value of the securities pledged, and if there be any securities in the possession of said defendants, or any of them, not pledged that they discover fully the value and character of said assets and the manner in which they were delivered to or came into the possession of the said defendants.

4. That this Honorable Court in accordance with Equity Rule 54 of this Court sign an appropriate order requiring the defendants, Riggs National Bank, Second National Bank, and American Security & Trust Company, and each of them, to answer under oath interrogatories that may be asked of them by way of discovery on the matters concerning the securities, or things of value in their possession, the manner in which they were acquired, the amount of lien against them in favor of the said individual defendant answering, and what securities, if any, they hold not pledged, including all securities pledged or delivered to them or in their possession in the name of Herman R. Howenstein, H. R. Howenstein Co., Katherine M. Howenstein, or E. Catesby Rowzee.

5. That upon final hearing of this cause a decree may be entered herein setting aside and declaring of no legal effect the transfer of the properties and all of the properties enumerated and described in the original petition of Anna S. Sabin filed in this cause from Herman R. Howenstein to the defendant H. R. Howenstein Co., or to any of the individual defendants, including the 996 shares of stock issued to and now in the name of the wife, the defendant Katherine M. Howenstein, and any stock issued and now in the name of any of the other defendants in said cause; and likewise all of the amounts of money, bonds, stocks, or things of value found in the possession of the defendants, or pledged with any of the defendants in the name of Herman R. Howenstein, H. R. Howenstein Co., Katherine M. Howenstein, E. Catesby Rowzee, or in the name of any of the other defendants, and that all of said properties, moneys, securities and stock be decreed to be subject to the payment of the judgments in favor of your petitioner
104 in this cause in accordance with the principles of law and equity.

6. That upon final hearing of said cause, the Court shall enter a decree herein decreeing the real estate and personal properties of every nature, kind and description, now in the name of the H. R. Howenstein Co. to be in fact the property of the defendant Herman R. Howenstein, and that the same be decreed to be subject to the payment of the judgments in favor of your petitioner in this cause in accordance with the principles of law and equity.

7. That upon final hearing of said cause the Court shall enter a decree decreeing that the corporation is in fact not a corporation in law, but that the same is, was and always has been, a thing set up and created by the defendant Herman R. Howenstein for the purpose of avoiding the obligations in existence and created by him prior to the formation of said corporation, and those then about to be incurred by him, and including the indebtedness representing the obligations upon which the judgments were entered in favor of the petitioner in this cause and against the defendant Herman R. Howenstein.

8. That the court decree upon final hearing that the 996 shares of stock issued to the defendant Katherine M. Howenstein by the H. R. Howenstein Co. be declared to be void as against the creditors of the defendant, including the petitioner, in existence in fact at the time of, or prior to the issuance of said stock; or, that the same be decreed to be held by the defendant Katherine M. Howenstein as trustee for Herman R. Howenstein; and that a decree be entered in like manner as against the four shares of stock issued to and standing in the name of E. Catesby Rowzee. And that the said stock, and all of said stock, be sold and the proceeds derived therefrom be applied to the payment of the said judgments in favor of your petitioner in this cause in accordance with the principles of law and equity.

9. And for such other, further and general relief as to the Court may seem just and proper to do full equity involving all of the matters and things to be determined in the pledges in this cause, and with full protection to all of the rights of all the parties in said cause.

J. BARRETT CARTER,
Petitioner.

105 GEORGE C. WARNER, JR.,
Attorney for Petitioner,
1101 Denrike Building,
1010 Vermont Avenue, N. W.

Let this be filed.

A. R. W., *Justice.*

DISTRICT OF COLUMBIA, ss:

J. Barrett Carter, being first duly sworn, on oath deposes and says that he has read the foregoing intervening peti-

tion by him subscribed and knows the contents thereof; that the matters and things therein stated as of his own knowledge are true, and those matters and things therein stated upon information and belief, he believes to be true.

J. BARRETT CARTER.

Subscribed and sworn to before me this 22nd day of November, A. D. 1934.

MABEL L. CLOPTON,
Notary Public, D. C.

106 *Separate Answer of the Second National Bank of Washington, Washington, D. C., to Judgment Creditor's Bill.*

Filed Dec. 3, 1934.

The defendant, The Second National Bank of Washington, Washington, D. C., for separate answer to the judgment creditor's bill filed herein, respectfully shows to the Court as follows:

1 and 2. On information and belief this defendant admits the averments of Paragraphs 1 and 2 for the purposes of this suit only.

3. On information and belief this defendant admits for the purposes of this suit only that the defendant, Katherine M. Howenstein, is a citizen of the United States, a resident of the District of Columbia and is sued as the wife of the defendant, Herman R. Howenstein. This defendant has no personal knowledge of the other averments of Paragraph 3 and neither admits nor denies the same.

4. On information and belief this defendant admits for the purposes of this suit only that the defendant corporation, H. R. Howenstein Company, is a corporation purported to have been organized and existing under and by virtue of the laws of the District of Columbia, that
107 it has its principal office and is doing business in the District of Columbia and is sued as such corporation. This defendant has no personal knowledge of the other averments of Paragraph 4 and neither admits nor denies the same.

5. On information and belief this defendant admits for the purposes of this suit only that the defendant, E. Catesby Rowzee, is a citizen of the United States and a resident of

the District of Columbia and that he is sued in his own right. This defendant has no personal knowledge of the other averments of Paragraph 5 and neither admits nor denies the same.

6. On information and belief this defendant admits for the purposes of this suit only that the defendant, American Security & Trust Company, is a body corporate maintaining an office and doing a general banking business in the District of Columbia and is sued in its own right as a corporation. This defendant has no personal knowledge of the other averments of Paragraph 6 and neither admits nor denies the same.

7. On information and belief this defendant admits for the purposes of this suit only that the defendant, The Riggs National Bank, is a body corporate, maintaining an office and doing a general banking business in the District of Columbia and is sued in its own right as a corporation. This defendant has no personal knowledge of the other averments of Paragraph 7 and neither admits nor denies the same.

8. This defendant admits that it is a body corporate maintaining an office and doing a general banking business in the District of Columbia and that it is sued in its own right as a corporation. Except as hereinafter set forth this defendant denies that it is the holder, or pledgee, or
108 lienor, or collector, of certain deeds of trust, deeds of trust notes, and other securities, accounts receivable and other assets belonging to and owned in law or equity by the defendants, Herman R. Howenstein and H. R. Howenstein Company, or owned by the defendant, Herman R. Howenstein, but held by him in the name of the defendant corporation, H. R. Howenstein Company, and the defendants, Katherine M. Howenstein and E. Catesby Rowzee, or of deeds of trust, deeds of trust notes, accounts receivable and other assets in which the defendants Herman R. Howenstein and H. R. Howenstein Company have an equity or an equitable interest. This defendant admits that at its Uptown Office maintained at 1333 G Street, N. W., in the said City of Washington, District of Columbia, there are checking accounts in the names of H. R. Howenstein Company, Trustee Rents, and Mrs. H. R. Howenstein, respectively.

9, 10, 11, 12, 13, 14, 15, 2nd Paragraph numbered 15 and 16. This defendant has no personal knowledge of the averments of Paragraphs 9, 10, 11, 12, 13, 14, 15, 2nd paragraph numbered 15 and 16 and neither admits nor denies the same.

17. Except for the checking accounts referred to in the paragraph of this answer in answer to paragraph 8 of the judgment creditor's bill, this defendant denies the averments in Paragraph 17 that the defendant, Herman R. Howenstein, has in his name and in the names of the defendants H. R. Howenstein Company, Katherine M. Howenstein, E. Catesby Rowzee and others certain trust real estate notes, accounts receivable and other assets which are in the possession of and are being held by this defendant. With respect to the other averments contained in Paragraph 17 this defendant has no personal knowledge and neither admits nor denies the same.

18. This defendant admits that at its said Uptown Office there are checking accounts in the names of H. R. Howenstein Company, Trustee Rents, and Mrs. H. R. Howenstein, and Mrs. H. R. Howenstein, respectively. This defendant has no personal knowledge of the other averments of Paragraph 18 and neither admits nor denies the same.

19 and 20. This defendant has no personal knowledge of the averments of Paragraphs 19 and 20 and neither admits nor denies the same.

And having answered this judgment creditor's bill, this defendant for further answer alleges that it is the owner and holder of a promissory note of the defendant, H. R. Howenstein dated September 12, 1934, payable three months after date for \$4,000 with interest at the rate of six per centum per annum until paid to the order of the defendant H. R. Howenstein Company and by it duly endorsed by its secretary, the defendant H. R. Howenstein; that said loan was made and such credit extended by this defendant on the strength of the checking account carried with this defendant at the time said loan was made by the defendant H. R. Howenstein Company and also upon faith of future deposits to be made in said account; that by reason of the foregoing this defendant asserts that, to the extent of moneys therein owned by either H. R. Howenstein or H. R. Howenstein Company, it has a claim of set-off against and

a lien upon the checking account carried with it in the name of H. R. Howenstein Company, Trustee Rents, to the amount of the indebtedness of the defendants H. R. Howenstein and H. R. Howenstein Company as evidenced by said promissory note.

And for further answer to this judgment creditor's bill this defendant says that if this Honorable Court should find as a fact that the money on deposit with this defendant in the name of Mrs. H. R. Howenstein is the property of either of the defendants Herman R. Howenstein or H. R.

Howenstein Company, then this defendant would
110 have a lien against the said moneys to the extent of the indebtedness of the defendants H. R. Howenstein and H. R. Howenstein Company to this defendant as evidenced by said promissory note dated September 12, 1934.

THE SECOND NATIONAL BANK OF WASH-
INGTON, WASHINGTON, D. C.,
By VICTOR B. DEYBER,
President.

[CORPORATE SEAL.]

E. F. COLLADAY,
COLLADAY, McGARRAGHY, COLLADAY
& WALLACE,
1331 G Street, N. W.,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, ss:

Victor B. Deyber, being first duly sworn deposes and says that he is the President of The Second National Bank of Washington, Washington, D. C. and that he has read the foregoing answer by him subscribed on behalf of said The Second National Bank of Washington, Washington, D. C.,
and knows the contents thereof; that the facts therein
111 stated of his own knowledge are true and those stated upon information and belief he believes to be true.

VICTOR B. DEYBER.

Subscribed and sworn to before me this 3d day of December, 1934.

F. K. SEYBOTH,
Notary Public, D. C.

Separate Answer of Defendant, American Security & Trust Company, a Corporation.

112

Filed Dec. 3, 1934.

The defendant, American Security & Trust Company, a corporation, for separate answer to the Bill of Complaint in the above-entitled cause, says:

1 and 2. The averments of paragraphs 1 and 2 of the Bill of Complaint are admitted.

3. This defendant is without knowledge of the averments of paragraph 3 of the Bill of Complaint and neither admits nor denies the same.

4. This defendant is without knowledge of the averments of paragraph 4 of the Bill of Complaint and neither admits nor denies the same, and so far as material calls for strict proof thereof.

5. This defendant is without knowledge of the averments of paragraph 5 of the Bill of Complaint and neither admits nor denies the same.

6. Answering paragraph 6 of the Bill of Complaint, this defendant admits that it is a body corporate maintaining an office and engaged in a general banking business
113 in the District of Columbia, but denies that it is the holder or pledgee or lienor or collector of deeds of trust, deed of trust notes, or other securities, accounts receivable, or other assets owned by the defendant, Herman R. Howenstein or H. R. Howenstein Company, or held for Herman R. Howenstein in the name of the Defendant H. R. Howenstein Company, a corporation, or the defendants Katherine M. Howenstein or E. Catesby Rowzee; excepting only that it has a commercial bank account in the name of H. R. Howenstein Company, having at the time of the service of the Bill of Complaint on this Defendant a balance of \$87.40, and except that it holds for collection for the account of said H. R. Howenstein Company a certain promissory note made by Austin M. Cooper, secured on Lot 44 in Square 1083 in the District of Columbia, having at the time of the service of the Bill of Complaint in this cause upon this defendant an unpaid balance of \$166.26. And for further answer to said paragraph, this defendant shows to the Court that said H. R. Howenstein Company is indebted to this defendant in the amount of \$250.00,

and interest thereon, due November 28, 1934, on a promissory note made by H. R. Howenstein and endorsed by H. R. Howenstein Company, representing money loaned to said defendants by the American Security & Trust Company; said H. R. Howenstein and H. R. Howenstein Company being also liable to this defendant on a promissory note made by H. R. Howenstein and endorsed by H. R. Howenstein Company and discounted with this defendant, in the amount of \$700.00; and this defendant reserves and does not waive all rights of set-off and otherwise against said

bank account of \$87.40 and real estate note of Austin
114 M. Cooper held for collection as aforesaid, in satisfaction in whole or in part of the indebtedness of said H. R. Howenstein and H. R. Howenstein Company to this defendant, as hereinbefore set out.

7. This defendant admits that the Riggs National Bank is a corporation maintaining an office and doing a general banking business in the District of Columbia, but is without knowledge of the remaining averments of paragraph 7 of the Bill of Complaint and neither admits nor denies the same.

8. This defendant admits that the Second National Bank is a corporation maintaining an office and doing a general banking business in the District of Columbia, but is without knowledge of the remaining averments of paragraph 8 of the Bill of Complaint and neither admits nor denies the same.

9. This defendant is without knowledge of the averments of paragraph 9 of the Bill of Complaint and neither admits nor denies the same.

10. This defendant is without knowledge of the averments of paragraph 10 of the Bill of Complaint and neither admits nor denies the same, except so far as the averments of said paragraph relate to the records of this Court, which are admitted and as to which this defendant expressly refers to said records for certainty and use at the trial of the issues in this cause.

11. This defendant is without knowledge of the averments of paragraph 11 of the Bill of Complaint and neither admits nor denies the same, except so far as the averments of said paragraph relate to the records of this Court, which are admitted and as to which this defendant expressly refers to said records for certainty and use at the trial of the issues in this cause.

115 12. This Defendant is without knowledge of the averments of paragraph 12 of the Bill of Complaint and neither admits nor denies the same, except so far as the averments of said paragraph relate to the records of this Court, which are admitted and as to which this Defendant expressly refers to said records for certainty and use at the trial of the issues in this cause.

13. This defendant is without knowledge of the averments of paragraph 13 of the Bill of Complaint and neither admits nor denies the same.

14. This defendant is without knowledge of the averments of paragraph 14 of the Bill of Complaint and neither admits nor denies the same.

15. This defendant is without knowledge of the averments of paragraph 15 of the Bill of Complaint and neither admits nor denies the same.

15. This defendant is without knowledge of the averments of paragraph 15 of the Bill of Complaint and neither admits nor denies the same.

16. This defendant is without knowledge of the averments of paragraph 16 of the Bill of Complaint and neither admits nor denies the same.

17. Answering paragraph 17 of the Bill of Complaint, this defendant denies that it has in its possession or holds for the defendants H. R. Howenstein, H. R. Howenstein Company, Katherine M. Howenstein or E. Catesby Rowzee any accounts or securities, or credits, or other assets other than those hereinbefore specifically set out in paragraph 6 of this answer. Defendant is without knowledge of
116 the remaining averments of said paragraph and neither admits nor denies the same, and so far as material calls for strict proof thereof.

18. Answering paragraph 18 of the Bill of Complaint, this Defendant denies that it has in its possession or holds for the Defendants H. R. Howenstein, H. R. Howenstein Company, Katherine M. Howenstein and E. Catesby Rowzee any accounts or securities, or credits or other assets other than those hereinbefore specifically set out in paragraph 6 of this answer. Defendant is without knowledge of the remaining averments of said paragraph and neither admits nor denies the same, and so far as material calls for strict proof thereof.

19. This defendant is without knowledge of the averments of paragraph 19 of the Bill of Complaint and neither admits nor denies the same.

20. This defendant is without knowledge of the averments of paragraph 20 of the Bill of Complaint and neither admits nor denies the same.

Wherefore, having fully answered the averments of the Bill of Complaint, this defendant prays that it be forthwith dismissed with its reasonable costs in this behalf incurred.

AMERICAN SECURITY & TRUST
COMPANY,
By HOWARD MORAN,
Vice-President.

G. P. McGLUE,
T. F. BURKE,
R. H. DRISKILL,
*Woodward Bldg., Washington, D. C.,
Attorneys for Said Defendant.*

117 DISTRICT OF COLUMBIA, *to wit:*

Howard Moran, being duly sworn, deposes and says that he has read the foregoing answer to the Bill of Complaint in this cause by him subscribed as Vice-President of the American Security & Trust Company; that he is an officer of said Company authorized to sign this answer on its behalf; and that the facts therein stated on personal knowledge are true and those stated on information and belief I believe to be true.

HOWARD MORAN.

Subscribed and sworn to before me this 28th day of November 1934.

HARRY G. MULLER,
Notary Public, D. C.

My commission expires March 21, 1939.

118 *Separate Answer of the Defendant, Herman R. Howenstein, to the Bill of Complaint Herein.*

Filed Dec. 4, 1934.

This defendant, by protestation, not confessing or admitting as true any or all of the various averments in the

said Bill of Complaint alleged, for answer to so much and such parts thereof as he is advised it is necessary for him to answer, makes answer and says:

1. On information and belief he admits the allegations contained in paragraph one of said bill.

2. He admits that he is a citizen of the United States and a resident of the District of Columbia.

3. He admits that the defendant, Katherine M. Howenstein is a citizen of the United States, a resident of the District of Columbia and is his wife; that she is also the Vice-President of the defendant corporation, H. R. Howenstein Company. As to the remaining averments of the said paragraph this defendant avers that the same are redundant and impertinent and he moves to strike out the same.

119 4. He admits that the defendant, H. R. Howenstein Company, is a corporation. He admits that the said corporation was organized under the laws of the District of Columbia and that it has its principal office and is doing business in the District of Columbia. As to the remaining averments in the said paragraph, this defendant avers that the same are redundant and impertinent and he moves to strike out the same.

5. He admits that the defendant, Rowzee, is a citizen of the United States and a resident of the District of Columbia and that he is the President and Treasurer of the defendant, H. R. Howenstein Company. As to the remaining averments in the said paragraph, this defendant avers that the same are redundant and impertinent and he moves to strike out the same.

6. He admits that the defendant, American Security and Trust Company, is a body corporate doing a general banking business in the District of Columbia, and as to the remaining averments in the said paragraph, this defendant avers that the same are redundant and impertinent and he moves to strike out the same.

7. He admits that the defendant, The Riggs National Bank of Washington, is a body corporate having an office and doing a general banking business in the District of Columbia, and as to the remaining averments in the said paragraph, this defendant avers that the same are redundant and impertinent and he moves to strike out the same.

120 8. He admits that the defendant, Second National Bank, is a body corporate having an office and doing a general banking business in the District of Columbia, and as to the remaining averments in the said paragraph, this defendant avers that the same are redundant and impertinent and he moves to strike out the same.

9. Upon information and belief he admits the defendants, Johnsons, are citizens of the United States and residents of the District of Columbia, and as to the remaining averments in the said paragraph, this defendant avers that the same are redundant and impertinent and he moves to strike out the same.

10. Answering the averments contained in paragraph ten, this defendant denies that on, to wit, May 2, 1927, he executed or caused to be executed a certain promissory note in the amount of Fifty thousand dollars (\$50,000.00) secured by a second lien on property known as the Embassy Apartments, as in said paragraph averred, and that the payment of the principal and interest thereof was guaranteed by him, but he avers the fact to be that on, to wit, May 2, 1927, there were executed by one George E. Wyne and this defendant thirty-six (36) several promissory notes aggregating the sum of One hundred thousand dollars (\$100,000.00) secured by second deed of trust on the Embassy Apartments located on Lot 808 in Square 2591 in the District of Columbia, of which ten (10) notes subsequently were negotiated for usurious interest to one Emanuel Speich. That subsequently, on or about the 20th day of February, 1929, this defendant and the said Wyne, being the title holders of the said Embassy Apartment House, conveyed the same to the Embassy Apartment Company, a corporation, which had been organized about the first day of January, 1929, under the laws of the District of Columbia. Thereafter, in the month of May, 1931, the said corporation of Embassy Apartment Company sold the said apartment building to the Edson-Briggs Company, subject to a first deed of trust securing the sum of about Four hundred and fifty thousand dollars (\$450,000) and the second deed of trust securing notes aggregating the sum of One hundred thousand dollars (\$100,000.00) hereinbefore referred to, of which the notes aggregating Fifty thousand dollars (\$50,000.00) at that time held as aforesaid by the said Speich, his wife, or the plaintiff, constituted a part.

121

That thereafter, in the month of May, 1932, the said apartment house in the meantime having been conveyed by the said Edson-Briggs Company to one Thomas W. Law, and default having been made by the then owners of the property in the payment of the amount secured under the said second deed of trust, the said Embassy Apartment House was sold at public auction on about the 25th day of May, 1932, under the said second deed of trust, and purchased by the Embassy Apartment Company, which, in consummation of its said purchase, executed its four (4) certain promissory notes secured by a deed of trust upon the said

122 Embassy Apartment House, one thereof being in the sum of Fifty thousand dollars (\$50,000), bearing date May 25, 1932, and the prior notes held by the plaintiff herein were cancelled and delivered up and in lieu thereof there was accepted by the plaintiff the said note made by the Embassy Apartment Company in the sum of Fifty thousand dollars (\$50,000.00) bearing date May 25, 1932, which said note was endorsed and guaranteed by the said George E. Wyne and this defendant, and which said note is the note sued on in that cause pending in the District of Columbia known as 83,220 at Law in the said bill referred to. And this defendant avers that the said Embassy Apartment House was ample and full security for the amount due under the two mortgages secured thereon and was of the value of more than the amount thereby secured. This defendant denies that he was the owner of any of the notes secured under the second deed of trust first hereinbefore referred to.

This defendant denies that he requested the plaintiff for permission to advertise and sell the property under the said second deed of trust for his protection so that he would acquire the title to the said property again and would immediately re-establish the said obligation then existing by issuing a new trust on said property in the same amount as the old trust, but he avers that the interest was paid upon the said note so held by the plaintiff until November 25, 1932, and that thereafter there was default in the payment thereof and that subsequently the plaintiff recovered judgment, as set forth in the said paragraph, against

123 this defendant, and also against the said Wyne and the Embassy Apartment Company, upon the said note.

11. Answering paragraph eleven, this defendant admits that on or about the 24th day of January, 1934, the said plaintiff filed another suit in the Supreme Court of the District of Columbia, being known as Law Cause 83,640, to recover of this defendant the sum of Fifteen thousand dollars (\$15,000.00) and interest, but he avers that in the said suit one George E. Wyne and the Highview Construction Company were named as co-defendants and judgment was also obtained against him; that the said suit was based on fifteen (15) certain promissory notes bearing date the 11th day of January, 1926, executed by the Highview Construction Company, as maker, payable to the order of one A. L. Weber and endorsed by the said Wyne and this defendant, which said notes were never protested for non-payment. And this defendant avers that the aforesaid fifteen (15) promissory notes were secured by a second deed of trust upon real estate and improvements known as the Highview Apartments, Washington, D. C., which apartments were fully worth the amount secured by said deed of trust and more.

12. Defendant has no knowledge or information with respect to the averments contained in paragraph 12 and therefore does neither admit nor deny the same, but should the same be material to his interests, he demands strict proof thereof.

124 13. Answering the averments contained in paragraph thirteen, this defendant says that some time in the month of November, 1898, he established and became engaged in the real estate business. At that time he was not engaged in the building business. That thereafter, on or about the first day of December, 1902, the corporation known as H. R. Howenstein Company was organized under and by virtue of the laws of the District of Columbia with an authorized capital of \$50,000.00, of which only \$25,000.00 was issued. He admits that at the time of the organization of that company he transferred to the said corporation the business which had theretofore been conducted by him, consisting of a real estate, brokerage, insurance and rent collection business, and that this business constituted his whole assets, in return for which he received shares of stock aggregating the sum of Twenty-four thousand, six hundred dollars (\$24,600.00). He denies that he continued to operate his former business, which was not incorporated,

under the new corporate name of H. R. Howenstein Company, and he denies that although he had incorporated his business, as aforesaid, he continued in fact as the sole managing head, director and sole owner of the said company, and that he is now the sole manager, head, director and practically the sole owner of the said corporation, H. R. Howenstein Company. He emphatically denies that the said defendant corporation, H. R. Howenstein Company, was organized in order to defraud, hinder and delay the creditors of the said Herman R. Howenstein and in
125 order to avoid any obligation which he might incur or which had been incurred and that the said defendant corporation took over and accepted all of the assets of this defendant without giving any valuable or other consideration therefor. But he avers that at the time of organizing said corporation and the transfer to it of his real estate, insurance and rent collection business, he was not indebted and had no thought and did not contemplate incurring any of the liabilities which were incurred in the last few years.

14. Answering the averments contained in paragraph 14, this defendant avers that in the month of January, 1920, the capital of the defendant company, H. R. Howenstein Company, was duly increased from \$50,000.00 to \$100,000.00, of which this defendant received nine hundred and ninety-six (996) shares. He admits that on or about the first day of July, 1931, he transferred 996 shares of the stock in the said company to his wife, the defendant Katherine M. Howenstein, and that said Katherine M. Howenstein still holds the legal title to the said 996 shares of stock.

The remaining averments of said paragraph charging fraud, intention to defraud and knowledge of fraud, are denied and this defendant denies that as a result of said alleged fraudulent scheme, as set forth in the said paragraph, and the transfer of said 996 shares of stock, he divested himself of and conveyed away assets of the approximate value of One Million dollars (\$1,000,000.00) without receiving one cent as a consideration therefor.

126 15. This defendant admits that he was president of the defendant corporation up to about 1933. He denies that he ever was treasurer thereof. He admits that the defendant, Rowzee, was Secretary of the defendant cor-

poration from about 1925 to 1933. He avers that at a meeting of the stockholders of the said company held in October, 1933, the said Rowzee was elected President thereof and this defendant was elected Secretary and general manager and the defendant, Katherine M. Howenstein, was elected Vice-President. He denies that he is the sole manager and sole owner of the said corporation or that the said Rowzee or his wife, Katherine M. Howenstein, are merely straw parties used by him in an attempt and effort to comply with the corporate laws of the District of Columbia and that they have no voice and take no active part in the management of the affairs or policies of the defendant corporation.

15. Answering paragraph 15, this defendant says that it is untrue that he is the owner of and holds title in his name and in the name of his wife to the real property known as 4704 Blagden Avenue, Northwest, in the City of Washington, District of Columbia. On the contrary, he avers that he and his said wife are tenants by the entireties of the said property, which is subject to a first trust of Twelve thousand dollars (\$12,000) and a second trust securing Eight thousand dollars (\$8,000.00).

127 16. Answering the allegations contained in paragraph 16, this defendant emphatically denies that as a part of an alleged fraudulent scheme and intent to divest himself of all his assets and in order to defraud, hinder and delay his existing and future creditors he conveyed certain real property to the defendant corporation, H. R. Howenstein Company, without receiving any valuable or any other consideration therefor and that he is still the owner of certain parcels of real estate located in the District of Columbia, the said real estate being held for him in the name of the defendant corporation, H. R. Howenstein Company, and which is described in the said paragraph, but, on the contrary, this defendant avers and says that when the defendant corporation, H. R. Howenstein Company, was organized in 1902 he was advised by the officers of the various real estate title insurance companies and other conveyancers in the District of Columbia that a corporation organized under the laws of the District of Columbia for the purpose of building, dealing in, selling and conveying real estate could not be organized, and that such corporation could not pass or convey a good title; that the title to

any real estate dealt in or purchased by the said defendant corporation had better be taken in the name of an individual, who could pass title thereto in the event of sale or disposition thereof, and upon such advice, thereafter, up to the year 1929, all real estate purchased by or developed by the said defendant corporation was taken and the title was vested in this defendant, who held the same in trust for the defendant corporation subject to be disposed of by him

128 as the said corporation might direct. That this practice was followed from the year 1902, the date of the organization of the defendant corporation, until about the month of July, 1929, when this defendant and the officers of the defendant corporation were advised by the real estate title insurance companies of the District of Columbia that they would pass title out of the said corporation in the event that it held title to real estate, and thereupon, by deed bearing date on or about the 6th day of July, 1929, made and executed under the direction of the defendant corporation, this defendant conveyed to the said corporation all the real estate which he held in trust for it and in which he had no individual pecuniary interest whatsoever, the consideration for the purchase and improvements thereof having been originally contributed and paid by the defendant corporation.

Further answering said paragraph, this defendant denies that the list of real estate set forth in said paragraph as conveyed by him to the defendant corporation is correct; on the contrary he avers and says that a greater portion of the real estate mentioned in the said list as being conveyed by him to the said corporation was not so conveyed, but was acquired subsequent to July, 1929, directly by the corporation itself. He files herewith, marked Exhibit H. R. H. Exhibit A, a list of the properties which were conveyed by him to the corporation and a list marked H. R. H. Exhibit B of
129 the properties directly acquired by the said corporation subsequent to July 6, 1929, which said two lists embrace and cover all the properties mentioned in the said paragraph and which he prays may be read as part hereof at the final or any other hearing of this cause.

17. Answering the averments contained in paragraph 17, this defendant denies that he has in his name or in the names of the defendants, H. R. Howenstein Company, Katherine M. Howenstein, E. Catesby Rowzee, and others

numerous accounts receivable and a substantial equity or equitable interest in certain outstanding first, second and other trust real estate notes, together with other intangible assets, nor has he the legal or equitable title or any equity in the aforesaid Embassy Apartments. He denies that the Riggs National Bank, the Second National Bank and the American Security and Trust Company hold certain trust real estate notes or accounts receivable and other assets subject to certain pledges or liens so far as this defendant is concerned. Defendant denies that the plaintiff is entitled to the appointment of a receiver, as claimed and set forth in said paragraph.

18. Answering the averments contained in paragraph 18, he denies that there are assets, including large sums of money, in the possession of the defendants, Riggs National Bank, the American Security and Trust Company, Second National Bank, the H. R. Howenstein Company and Katherine M. Howenstein and E. Catesby Rowzee, which are in law and equity the property of this defendant, or
130 that any such assets are shielded or concealed by any alleged fraudulent transaction, as in the said bill averred, but he avers and says that if there are any such assets, the plaintiff has a complete remedy at law to reach the same.

19. Answering the averments contained in paragraph 19, this defendant says that he has no knowledge or information with respect to the same and therefore can neither admit nor deny the same, but should the said averments be material to his interests, he demands strict proof thereof.

And now having fully answered, this defendant prays to be hence dismissed.

HERMAN R. HOWENSTEIN.

TOBRINER, GRAHAM, BREZ
& TOBRINER,
By LEON TOBRINER,

Attorneys for the Defendant, Herman R. Howenstein, 932 Southern Building, Washington, D. C.

DISTRICT OF COLUMBIA, ss:

I, Herman R. Howenstein, being first duly sworn, on oath do depose and say that I have read the foregoing answer by me subscribed and know the contents thereof; that

the matters and facts therein stated as of my personal
knowledge are true, and those stated upon informa-
131 tion and belief I believe to be true.

HERMAN R. HOWENSTEIN.

Subscribed and sworn to before me this 3d day of De-
cember, A. D., 1934.

FREDERICK B. UMHAU,
Notary Public in and for the
District of Columbia.

(Here follow photolithographs H. R. H. (Exhibit "A"
and H. R. H. Exhibit "B", side folios 132 to 135, inclu-
sive.)

136 *Separate Answer of the Defendant, H. R. Howen-*
stein Company, to the Bill of Complaint Herein.

Filed Dec. 4, 1934.

This defendant, by protestation, not confessing or admit-
ting as true any or all of the various averments in the said
Bill of Complaint alleged, for answer to so much and such
parts thereof as it is advised it is necessary for it to an-
swer, makes answer and says:

1 and 2. This defendant admits the truth of the allega-
tions contained in paragraphs one and two of said Bill.

3, 4, 5, 6, 7, 8 and 9. This defendant admits the citizen-
ship and residence of the various defendants referred to
in paragraphs 3, 4, 5, 6, 7, 8 and 9. As to the remaining
averments in the said several paragraphs other than the
averments of citizenship and residence, this defendant says
that the same are redundant and impertinent and it moves
to strike out the same.

10 and 11. Answering paragraphs 10 and 11 of said bill,
this defendant says that it has no knowledge or informa-
tion with respect to the truth of the averments con-
137 tained in the said paragraphs and therefore neither
admits nor denies the same, but should the same be
material to its interests, it demands strict proof thereof.
It avers, however, that it believes the facts and circum-
stances set forth in the answer of the defendant, Herman

H.R.H. EXHIBIT "A"

<u>Lot</u>	<u>Square</u>
33	749
35	749
38	749
801	916
106	1055
26	1046
118	1929
80	2955
114	3563
116	3563
20	3566
22	3566
24	3566
25	3566
26	3566
38	3566
40 & 41	3566
42	3566
43 to 49	3566
50	3566
51	3566
52	3566
53	3566
54	3566
805	4060
1 to 32	4193
all of	4192
11	4229
137	4510
1 to 27	4194
29 to 34	4194

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<u>Lot</u>	<u>Square</u>
all of	4195
5 and 6	4198
22	4229
23	4229
24 to 31	4229
30 to 36	
and 802	4230
70	1102
30	1046
148	193
807	245
40	250

H.R.H. EXHIBIT "B"

<u>Lot</u>	<u>Square</u>
34	749
14	829
41	963
50	1092
83	2955
255	3034
3	3566
4	3566
5	3566
6	3566
8	3566
9	3566
10	3566
11	3566
12	3566
16	3566
17	3566
19	3566
21	3566
27	3566
37	3566
36	3566
231	3034
147	4008
156	4008
159	4008
244	4060
245	4060
246	4060
247	4060

<u>Lot</u>	<u>Squa re</u>
31	886
807	2976
828	2937
241	3031
56	1092
51	1092
52	1092
28	2656
31	3566
184	4059
105	1015
35	1091
17	4288
260	3031
186	5604
51	3502
110	1055
36	4229
44	1092
38	4229
53	4228
48	531
99	4507
63 and Part 6	937
Part 6	1000
439	1300

R. Howenstein, to the said paragraphs of said Bill state the substantial facts in relation thereto.

13. This defendant admits, on information and belief, that some time in November, 1898, the defendant, Herman R. Howenstein, established and became engaged in the real estate business. It is advised that the said business did not participate in the building business. It admits that on or about December 1, 1902, this defendant was incorporated under the laws of the District of Columbia and that it took over the business theretofore conducted by the said Herman R. Howenstein, which consisted of a real estate, brokerage, insurance and rent collection business, and avers that the said Herman R. Howenstein, in consideration of the said transfer, received shares of stock aggregating the sum of Twenty-four thousand, six hundred dollars (\$24,600.00). It denies, however, that the said Herman R. Howenstein continued to operate his former business, which was not incorporated, under the new corporate name of H. R. Howenstein Company and that he continued in fact as the sole managing head, director and sole owner of this defendant and that he is at the present time in fact the sole managing head, director and practically the sole owner of this defendant. This defendant denies most emphatically that it was organized for the purpose of taking over and continuing the business of the said Herman R. Howenstein and in order to defraud, hinder and delay the creditors of the said defendant, Herman R. Howenstein, and in order to avoid any obligations which the said defendant might incur or which had been incurred and that it took over and accepted the assets of the defendant, Howenstein's business without giving any valuable or other consideration therefor.

14. Answering paragraph 14, this defendant avers that in January, 1920, the capital of this defendant was increased from Fifty thousand dollars (\$50,000.00) to One hundred thousand dollars (\$100,000.00) and that the defendant, Herman R. Howenstein, received nine hundred and ninety-six (996) of the new shares of this company. It is admitted that a transfer was made by the said Herman R. Howenstein of the said shares to his wife, the defendant Katherine M. Howenstein, on or about July, 1931. This

defendant has no knowledge or information with respect to the truth of the remaining allegations of said paragraph fourteen and therefore does neither admit nor deny the same, but, should they become material to its interests, it demands strict proof thereof.

This defendant further says that the defendant, E. Catesby Rowzee, is the owner of four (4) shares of its capital stock and has been such owner for some period long
139 prior hitherto.

15. Answering paragraph fifteen, this defendant admits that the defendant Herman R. Howenstein was President of this defendant corporation up to October 14, 1933, and that the defendant E. Catesby Rowzee was Secretary of this defendant up to the said date, having been so elected Secretary in the year 1925; that at a meeting of the stockholders of this defendant held in October, 1933, the defendant E. Catesby Rowzee was elected President and Treasurer of this defendant corporation, the defendant Herman R. Howenstein was elected Secretary and General Manager, and the defendant Katherine M. Howenstein was elected Vice-President. It is denied that the said Herman R. Howenstein, however, continued and remained and still is the sole manager and sole owner of said corporation and that the defendants, Rowzee and Katherine M. Howenstein are merely straw parties used by the said Herman R. Howenstein in an attempt and effort to comply with the corporate laws of the District of Columbia and have no voice and take no active part in the management and direction of the affairs or policies of this defendant.

15a. With respect to the allegations contained in Paragraph 15 relating to the property known as 4704 Blagden Avenue, Northwest, Washington, D. C., this defendant, upon information and belief, avers that the said property is held by the defendants Herman R. Howenstein and Katherine M. Howenstein as tenants by the entireties, subject to two deeds of trust aggregating the principal sum of Twenty Thousand Dollars (\$20,000.00) and interest.
140

16. Answering paragraph 16, this defendant denies that as a part of an alleged fraudulent scheme and intent to divest himself of all his assets and in order to defraud, hinder and delay his existing and future creditors, the defendant,

Herman R. Howenstein, conveyed certain real property to this defendant corporation without receiving any valuable or other consideration therefor, and that he is still the owner of certain parcels of real estate located in the District of Columbia which is held for him in the name of this defendant and which is described in the said paragraph, but this defendant avers and says that when it was incorporated in 1902, its officers were advised by the several real estate title insurance companies and other conveyancers of the District of Columbia that under the law of its organization it could not be organized for the purpose of building, dealing in, selling and conveying real estate, and that no good title could be passed by it under those conditions in the event it undertook to purchase and sell real estate in its own name, and that it would be more advisable for the convenience and complete conduct of its business, that title to any real estate which it might purchase and develop should be taken in the name of an individual who could pass title without any question, and upon such advice, up

to the year 1929, all real estate purchased by or
141 developed by this defendant corporation was taken
and the title was vested in the said Herman R. Howenstein, who held the same in trust for this defendant, subject to be disposed of by him as it might direct; that this custom and practice was followed from the year 1902, the date of the incorporation of this defendant, until about the month of July, 1929, when its officers were advised by the Real Estate Title Insurance Company that they would pass title out of this corporation in the event that it held title to real estate and made sale thereof. And thereupon, by deed bearing date on or about the sixth day of July, 1929, the said Howenstein conveyed to this defendant corporation all the real estate which he held in trust for it, and in which he had no individual pecuniary interest, inasmuch as the purchase price and cost of any improvements erected thereon had been contributed and paid by this defendant.

This defendant further denies that the list of real estate set forth in the said paragraph as conveyed by the said Howenstein to this defendant corporation is correct. It avers and says that a greater portion of the real estate mentioned in the said list as conveyed by the said Howenstein to this defendant was not so conveyed but was ac-

quired subsequent to July, 1929, directly by this defendant corporation. It avers that Exhibit H. R. H. "A", filed with the answer of the defendant Howenstein, correctly sets forth the properties which were conveyed by him to this defendant, and that the list marked H. R. H. Exhibit 142 "B", with said answer, correctly sets forth the properties which were acquired by this defendant corporation subsequent to July 6, 1929, and these two lists cover and embrace all the properties mentioned in the said sixteenth paragraph of plaintiff's bill.

17. Answering paragraph 17, this defendant denies that the defendant Herman R. Howenstein has in its name any accounts receivable or any equity or equitable interest in outstanding first, second or other trust real estate notes, or other intangible assets, and has no knowledge or information that the said financial institutions referred to in the said paragraph hold any real estate notes, accounts receivable or other assets belonging to the said defendant, Herman R. Howenstein; and it avers that the plaintiff is not entitled to the appointment of a Receiver of the assets of this defendant corporation, nor entitled to wind up the affairs and business of this corporation.

18. Answering paragraph 18, this defendant denies that it has in its possession assets including large sums of money belonging to the said defendant, Herman R. Howenstein. It has no knowledge or information with respect to the other averments of said paragraph.

19. Answering paragraph 19, this defendant, upon information and belief, says that some time in the year 143 1925, the said Lloyd H. and Florence P. Johnson purchased from this defendant Lot 82, in Square 3535, in the City of Washington, District of Columbia, which was at that time conveyed to them by the defendant Herman R. Howenstein, who held the same in trust for this defendant; that some time thereafter it was ascertained that there was some defect in the deed respecting the description of the real estate thereby conveyed, and a corrective deed or the original deed was corrected and recorded, as this defendant believes, in January, 1934, and is the deed referred to in the said nineteenth paragraph of said bill.

And now having fully answered, this defendant prays to be hence dismissed, with its proper costs.

HERMAN R. HOWENSTEIN COMPANY,
By E. CATESBY ROWZEE,
President.

TOBRINER, GRAHAM, BREZ & TOBRINER,
By LEON TOBRINER,
Attorneys for Defendant,
Herman R. Howenstein Company,
932 Southern Building,
Washington, D. C.

144 DISTRICT OF COLUMBIA, ss:

I, E. Catesby Rowzee, being first duly sworn, on my oath do depose and say that I am President of the Herman R. Howenstein Company; that I have read the foregoing answer by it subscribed and know the contents thereof; that the matters and things therein stated upon personal knowledge are true, and those stated upon information and belief, I believe to be true.

E. CATESBY ROWZEE.

Subscribed and sworn to before me this 4th day of December, A. D. 1934.

CHARLES W. STEERS,
Notary Public in and for the District of Columbia.

145 *Separate Answer of the Defendant, Katherine M. Howenstein, to the Bill of Complaint Herein.*

Filed Dec. 4, 1934.

This defendant, by protestation, not confessing or admitting as true any or all of the various averments in the said Bill of Complaint alleged, for answer to so much and such parts thereof as she is advised it is necessary for her to answer, makes answer and says:

1 and 2. On information and belief she admits the allegations contained in paragraphs one and two of the said bill.

3. She admits that she is a citizen of the United States, a resident of the District of Columbia, and is the wife of the defendant, Herman H. Howenstein; that she is also the Vice-President of the defendant corporation, H. R.

Howenstein Company. As to the remaining averments of the said paragraph, this defendant avers that the same are redundant and impertinent and she moves to strike out the same.

146 4. She admits that the defendant, H. R. Howenstein Company, is a corporation. She admits that the said corporation was organized under the laws of the District of Columbia and that it has its principal office and is doing business in the District of Columbia. As to the remaining averments in the said paragraph, this defendant avers that the same are redundant and impertinent and she moves to strike out the same.

5. She admits that the defendant, Rowzee, is a citizen of the United States and a resident of the District of Columbia and that he is the President and Treasurer of the defendant, H. R. Howenstein Company. As to the remaining averments in the said paragraph, this defendant avers that the same are redundant and impertinent and she moves to strike out the same.

6, 7, 8, 9, 10, 11 and 12. This defendant was married to the defendant, Herman R. Howenstein, on the 8th day of July, 1929. She has no knowledge or information with respect to the truth of the various allegations contained in paragraphs 6, 7, 8, 9, 10, 11 and 12 of said bill and therefore can neither admit nor deny the same, but, should the same be material to her interests, she demands strict proof thereof.

13. Answering paragraph 13, this defendant says that with respect to all the averments of fact and alleged fraudulent intent set forth in said paragraph and alleged to have existed or been made prior to the date of the marriage of this defendant to the said defendant, Herman R.
147 Howenstein, she has no knowledge or information and therefore does neither admit nor deny the same, but should they be material to her interests, she demands strict proof thereof. She denies, however, that the said Herman R. Howenstein is at the present time in fact the sole managing head, director and practically the sole owner of the said corporation, H. R. Howenstein Company.

14. Answering the allegations contained in paragraph fourteen, this defendant has no knowledge or information with respect to the transactions of the defendant, Herman R. Howenstein, or the said defendant corporation, prior to the date of her marriage with the said Howenstein and

therefore does neither admit nor deny any or all of the allegations in the said paragraph contained relating to transactions prior to the said date, but should the same be material to her interests, she demands strict proof thereof. She admits that on or about the first day of July, 1931, the said defendant transferred to her nine hundred and ninety-six (996) shares of the capital stock of the said defendant corporation, which she still holds. The remaining averments of said paragraph charging fraud, intention to defraud and knowledge of fraud are denied. She denies that at the time of the said transfer she knew and understood the responsibilities and liabilities which had been assumed by the defendant Herman R. Howenstein as an individual as alleged in said paragraph and she denies that

148 she accepted a transfer of the said shares with the knowledge of the alleged intent of her husband to avoid his obligations and responsibilities and to defraud, hinder and delay his existing and future creditors and with the purpose of aiding him in his attempt to so defraud, hinder and delay. She has no knowledge or information that the defendant, Herman R. Howenstein, by said transfer divested himself of and conveyed away his assets of the value alleged in the said paragraph and she denies that she received assets from the said defendant of the approximate value of One Million Dollars (\$1,000,000.00), as alleged in the said paragraph.

15. Answering paragraph 15, this defendant admits that during the years 1930, 1931 and 1932 the said Herman R. Howenstein was President of the defendant corporation. She avers that at a meeting of the stockholders of the said company held October, 1933, the defendant, Rowzee, was elected President and Treasurer, the said Herman R. Howenstein was elected Secretary and General Manager and this defendant was elected Vice-President of the said company. She denies that the said Howenstein is the sole manager and sole owner of the said corporation or that this defendant is merely a straw party used by her husband in an attempt and with an effort to comply with the corporate laws of the District of Columbia and that she has no voice and takes no active part in the management of the affairs or policies of the defendant corporation.

149 15a. Answering the additional paragraph marked 15, this defendant denies that the said Herman R.

Howenstein is the owner and holds title in his name and in the name of this defendant to the property known as 4704 Blagden Avenue, Northwest. She avers that she, with her said husband, are tenants by the entirety of said property and hold the title to said property as such.

16. Answering the averments contained in paragraph 16, this defendant says that inasmuch as such allegations relate to transactions of date prior to this defendant's marriage and her association with the defendant corporation, she has no knowledge or information with respect to the truth thereof and does, therefore, neither admit nor deny the same, but should the same be material to her interests, she demands strict proof thereof.

17. Answering the averments contained in paragraph 17, this defendant denies that she has or holds for her husband any accounts receivable or any equity or equitable interest in any outstanding first, second and other trust real estate notes, or other intangible assets, nor has she any knowledge or information with respect to any securities, notes or accounts receivable alleged in the said paragraph to be in the possession or held by the banks therein mentioned, and she says that she is advised that the plaintiff is not entitled to the appointment of a receiver or receivers, as in the said paragraph set forth.

18. Answering the averments contained in paragraph 18, this defendant denies that there is in her possession certain assets, including large sums of money, the property of the defendant, Herman R. Howenstein.

19. Answering paragraph 19, this defendant avers that she has no knowledge or information with respect to the truth of the allegations set forth in said paragraph, and therefore does neither admit nor deny the same, but should the same be material to her interests, she demands strict proof thereof.

And now having fully answered, she prays to be hence dismissed.

KATHERINE M. HOWENSTEIN.

TOBRINER, GRAHAM, BREZ & TOBRINER,
By LEON TOBRINER,

*Attorneys for the Defendant, Katherine M.
Howenstein, 932 Southern Building,
Washington, D. C.*

DISTRICT OF COLUMBIA, ss:

I, Katherine M. Howenstein, being first duly sworn, on my oath do depose and say that I have read the foregoing Answer by me subscribed and know the contents thereof; that the matters and facts therein stated as of my personal knowledge are true, and those stated upon information and belief I believe to be true.

151

KATHERINE M. HOWENSTEIN.

Subscribed and sworn to before me this 3rd day of December, A. D. 1934.

CHARLES W. STEERS,
*Notary Public in and for the
District of Columbia.*

152 *Separate Answer of the Defendant, E. Catesby Rowzee, to the Bill of Complaint Herein.*

Filed Dec. 4, 1934.

This defendant, by protestation, not confessing or admitting as true any or all of the various averments in the said Bill of Complaint alleged, for answer to so much and such parts thereof as he is advised it is necessary for him to answer, makes answer and says:

1 and 2. Upon information and belief he admits the allegations contained in paragraphs 1 and 2 of the said bill.

3. Answering the allegations contained in paragraph 3 of said bill, this defendant admits that the defendant, Katherine M. Howenstein, is a citizen of the United States, a resident of the District of Columbia, and is the wife of the defendant, Herman R. Howenstein, and is also Vice-President of the defendant corporation, H. R. Howenstein Company.

4. Answering the averments contained in paragraph four of said bill, this defendant admits that the defendant,
153 H. R. Howenstein Company, is a corporation organized and existing under and by virtue of the laws of the District of Columbia with its principal office and doing business in said District. As to the remaining averments in the said paragraph, this defendant avers that the same are redundant and impertinent and he moves to strike out the same.

5. Answering the averments contained in paragraph 5 of said bill, this defendant admits that he is a citizen of the United States, a resident of the District of Columbia, and that he is the President and Treasurer of the defendant corporation, H. R. Howenstein Company. He avers and says that he is and has for some time been the owner and holder of four shares of the capital stock of the said H. R. Howenstein Company, which he purchased and paid for with his own funds, and holds in his own absolute right and for the benefit of no one but himself, and that the said four shares are the absolute property of this defendant, in which the defendant, Herman R. Howenstein, has no interest whatsoever.

6, 7 and 8. Answering the averments contained in paragraphs 6, 7 and 8 of said bill, this defendant admits that the several banking institutions referred to in the said paragraphs are bodies corporate doing business in the District of Columbia. He has no knowledge or information with respect to what, if any, assets belonging to and owned in law and equity by the defendant Herman R. Howenstein, have been pledged with the said several corporations, but he avers and says that no such pledges have been
154 made by him inasmuch as he does not hold any of the property or assets of the said Herman R. Howenstein.

9. Answering the averments contained in paragraph 9 of said bill, this defendant says that he believes the defendants, Lloyd N. and Florence P. Johnson, are citizens of the United States and residents of the District of Columbia. He has no knowledge of any purchase made by the said defendants from the said Herman R. Howenstein or his wife, as set forth in the said paragraph, and therefore does neither admit nor deny the allegations therein contained, but should they be material to his interests, he demands strict proof thereof.

10 and 11. Answering the averments contained in paragraphs 10 and 11 of said bill, this defendant says that the details and circumstances in relation to the allegations of fact set forth in the answer of the defendant, Herman R. Howenstein, to the said paragraphs are according to the information and belief of this defendant correct and this defendant adopts the same to the extent that they are therein set forth.

12. This defendant has no knowledge or information with respect to the truth of the allegations contained in paragraph 12 of said bill and can neither admit nor deny the same, but should the same be material to his interests, he demands strict proof thereof.

13. Answering the averments contained in paragraph 13 of said bill, this defendant upon information and belief admits that some time in the year 1898, the defendant, Herman R. Howenstein, did establish and become engaged in a real estate business in the District of Columbia. He is not advised whether the said Howenstein was thereafter for some period of years engaged in the building business, but admits that in December, 1902, the Herman R. Howenstein Company was incorporated under the laws of the District of Columbia, and avers and says that he was one of the incorporators named in the certificate of incorporation filed therefor. Upon information and belief this defendant admits that the said Howenstein turned over to the said corporation the business which he was at that time conducting, which consisted of a real estate, brokerage, insurance and rent collection business, but he denies that it was turned over without any valuable or other consideration. He avers that the said Howenstein for the transfer of the said business to the said corporation received shares of stock aggregating the sum of \$24,600.00, the face value thereof. It is denied that the said Howenstein continued after the organization of the said corporation as the sole managing head, director, and sole owner of said corporation, or that he is at the present time the sole managing head, director and practically the sole owner of the corporation. This defendant denies that the said corporation was organized with intent to defraud, hinder and delay the creditors of the defendant, Howenstein, and in order to enable him to avoid any obligation which the said Howenstein might incur or which had then been incurred, and this defendant denies that the said defendant corporation took over and accepted all of the assets of the said defendant Howenstein's business without giving any valuable consideration therefor.

14. Answering the allegations contained in paragraph 14, this defendant says that for a period of about ten years prior to May, 1924, this defendant was not connected or associated with the defendant, Herman R. Howenstein

Company, but again became associated therewith in the month of May, 1924, and has continued to be so associated as an officer and stockholder hitherto up to this time. On information and belief this defendant admits that some time in the month of January, 1920, the capital stock of the said Howenstein Company was increased from \$50,000.00 to \$100,000.00, of which the defendant, Howenstein, at that time received 996 shares, the remaining four shares of said capital stock being held by several individuals. As hereinbefore averred, this defendant says that subsequent to his association with the said company in May, 1924, he acquired four shares of said capital stock, which were acquired by him with his own funds and are owned by him absolutely and in which the said Howenstein has no interest whatsoever. This defendant admits that on or about the first day of July, 1931, the said Howenstein transferred the said 996 shares of stock so held by him to the defendant, Katherine M. Howenstein, his wife, and that the said Katherine M. Howenstein still holds the legal title to the said 996 shares. He has no knowledge or information that

the said transfer as aforesaid was made without any
157 valuable or other consideration, or was made in order to defraud, hinder and delay the existing or future creditors of the said defendant, Howenstein, nor has this defendant any knowledge or information in relation to the other charges of fraudulent intent in the remaining portions of the said paragraph averred, and can therefore neither admit nor deny the same, but should the same be material to his interests, he demands strict proof thereof.

15. Answering the allegations contained in paragraph 15, this defendant admits that the defendant, Herman R. Howenstein, was President of the defendant Howenstein Company up to October, 1933. He denies that so far as his knowledge goes, that he ever was Treasurer thereof. He admits that he was Secretary of the said defendant corporation up to the said last mentioned date, and that in the said month of October, 1933, at a meeting of the stockholders of said corporation, this defendant was elected President and Treasurer, the defendant, Katherine M. Howenstein, Vice-President, and the defendant Howenstein was elected Secretary and General Manager of said corporation. He denies that the said Howenstein has continued and remained and still is the sole manager and sole owner of the said corporation, and that this defendant is a straw

party used by the defendant, Howenstein, in an attempt and effort to comply with the corporate laws of the District of Columbia, and that he has no voice and takes no active part in the management or direction of the
158 affairs or policies of the defendant Howenstein Company. On the contrary, this defendant avers, as hereinbefore stated, that he is the absolute owner of the said four shares of capital stock held by him in the said company, and that he takes a daily active and controlling part in the business and conduct of the affairs of the said corporation.

15-a. Answering paragraph 15-a, this defendant says that the premises 4704 Blagden Avenue, Northwest, referred to in the said paragraph, to his knowledge are held by the defendant, Howenstein, and his wife, Katherine M. Howenstein, as tenants by the entireties, subject to a first trust of \$12,000.00 and a second trust securing the sum of \$8,000.00.

16. Answering the allegations contained in paragraph 16, this defendant denies that the said Howenstein as a part of a fraudulent scheme, as alleged in the said paragraph, conveyed certain real estate to the defendant corporation, H. R. Howenstein Company, without receiving any valuable or other consideration therefor, or that the said defendant Howenstein is still the owner of certain parcels of real estate located in the District of Columbia, which is being held for him in the name of the said corporation, but he avers and says that when the said defendant, Howenstein Company, was organized in 1902, he, as one of the officers of the said company, was advised by the representatives of the various real estate title insurance companies and other conveyancers in the District of Columbia that
159 the purchase and sale of real estate by the said corporation was in violation of the laws of the District of Columbia, and that such corporation could not pass or convey a good title, and that it would be better and more advisable that the said corporation in purchasing and engaging in the building and construction business in said District should take title to real estate so purchased by it in the name of an individual, who could pass title thereto in the event of a sale of the property, and acting upon such advice all real estate purchased by or developed by the defendant corporation up to the year 1929, was taken and the title was vested in the said Herman R. Howenstein,

who held the same in trust for the defendant corporation subject to be disposed of by him as the said corporation might direct.

That in the month of July, 1929, the representatives of said defendant Howenstein Company were advised by the various title insurance companies that they would pass title to property sold by the said company if the said title was vested in it, and thereupon by deed bearing date on or about the sixth day of July, 1929, the defendant, Herman R. Howenstein, conveyed to the said corporation all the real estate which he held in trust for it in which he had no individual pecuniary interest whatsoever, in consideration for the purchase and the improvements thereon, and all necessary funds for that purpose having been originally contributed and paid by the said Herman R. Howenstein Company out of its own absolute funds.

160 Further answering said paragraph, this defendant denies that the list of real estate set forth in the said paragraph as conveyed by the said Howenstein to the defendant corporation is correct. He avers and says that a greater portion of the real estate mentioned in the said list as being conveyed by the defendant Howenstein to the said corporation was not so conveyed, but was acquired by the said corporation subsequent to July, 1929. He avers and says that the exhibit marked H. R. H. Exhibit "A" is a list of the property which was conveyed by the said Howenstein to the defendant Howenstein Company, and that the list marked H. R. H. Exhibit "B" is a correct list of property which was acquired by the said corporation subsequent to the conveyance of July, 1929.

17. Answering the averments contained in paragraph 17, this defendant denies that he has or holds for the defendant Herman R. Howenstein any accounts receivable or any equity or equitable interest in any outstanding first, second or other trust real estate notes or any intangible assets.

This defendant says that he knows that all three of the financial institutions mentioned in the said paragraph do hold certain real estate notes pledged as security for the indebtedness due to them by the said Howenstein Company, which said notes are the property of the Howenstein Company, but he denies, so far as his knowledge or information goes, that the said financial institutions hold any securities or notes which are the property of the

161 said Howenstein Company, for any indebtedness due
to the said institution by the defendant Herman R.
Howenstein.

18. Answering paragraph 18, this defendant denies most emphatically that there is in his possession or under his control any assets, money or property belonging to or held in trust for the defendant Herman R. Howenstein.

19. Answering paragraph 19, this defendant says that at some date practically nine years back, the defendants Johnson, referred to in the said paragraph, acquired title to lot 82, in square 3535, and conveyance was made and recorded to them at the time of their said purchase. That thereafter, so far as this defendant is advised, it was necessary to record the said deed with some correction as to description of the said real estate, and this is the deed in all probability referred to in said paragraph 19, as being of date January 2, 1934.

And this defendant further says that he is advised by counsel that the plaintiff has not in and by her bill made or stated such a case as entitles her to the relief therein prayed for, or any relief whatsoever, and he prays the benefit of this objection as if he had moved to dismiss the bill because thereof.

162 And now having fully answered, he prays to be
hence dismissed. E. CATESBY ROWZEE.

TOBRINER, GRAHAM, BREZ
& TOBRINER,
By LEON TOBRINER,
Attorneys for Defendant, E. Catesby Rowzee,
932 Southern Building, Washington, D. C.

DISTRICT OF COLUMBIA, ss:

I, E. Catesby Rowzee, being first duly sworn, on my oath do depose and say that I have read the foregoing answer by me subscribed and know the contents thereof; that the matters and things therein stated as of my personal knowledge are true, and those stated upon information and belief, I believe to be true.

E. CATESBY ROWZEE.

Subscribed and sworn to before me this 4th day of December, A. D. 1934.

CHARLES W. STEERS,
Notary Public in and for the
District of Columbia.

163 *Answer of the Riggs National Bank of Washington,
 D. C., to Judgment Creditor's Bill.*

Filed Dec. 8, 1934.

The answer of the Riggs National Bank of Washington to the judgment creditor's bill, filed in the above-entitled cause, respectfully shows the Court as follows:

1. Answering paragraph numbered 1 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

2. Answering paragraph numbered 2 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

3. Answering paragraph numbered 3 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

4. Answering paragraph numbered 4 of the bill of complaint, this defendant believes and therefore avers that the H. R. Howenstein Company is a corporation organized and existing under the laws of the District of Columbia, and that it is doing business in said District, but this defendant is without knowledge of the other allegations therein contained.

5. Answering paragraph numbered 5 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

6. Answering paragraph numbered 6 of the bill of complaint, this defendant admits that the American Security and Trust Company is a body corporate and that it maintains an office and does a general banking business in the District of Columbia, but further says that it is with-
164 out knowledge of the other allegations therein contained.

7. Answering paragraph numbered 7 of the bill of complaint, this defendant admits that it is a body corporate and maintains an office and does a general banking business in the District of Columbia, but this defendant denies that it is the holder or pledgor or lienor or collector of certain deeds of trust, deeds of trust notes and other securities, accounts receivable and other assets belonging to and owned in law or equity by the defendant, Herman R. Howenstein and H. R. Howenstein Company, or owned by the

defendant, Herman R. Howenstein and held by him in the name of the defendant corporation, H. R. Howenstein Company and the defendants, Katherine M. Howenstein and E. Catesby Rowzee, or in which deeds of trust, deeds of trust notes, accounts receivable and other assets the said defendants, Herman R. Howenstein and H. R. Howenstein Company have an equity or equitable interest, except that on, to wit, the 15th day of November, 1934, the H. R. Howenstein Company had a checking account with this defendant on which there was a balance of \$2,148.34; that the H. R. Howenstein Company had deposited with this defendant a real estate note for collection; said note was dated April 4, 1926 and was originally for the sum of \$3,450, but on said date there was a balance remaining on said note of \$2,462.41; that the H. R. Howenstein Company is indebted to this defendant in the sum of \$2,800 on an unsecured note; that the Embassy Apartment Company is indebted to this defendant in the sum of \$5,140 on notes endorsed by the defendant, Herman R. Howenstein and others, and the Embassy Apartment Company has a checking account with this defendant in which there was a balance of \$9.45 on, to wit, November 15th; and this defendant further says that on, to wit, November 15th the foregoing are the only relationships carried on the books of this defendant with any of the parties named as defendants in the aforesaid action.

8. Answering paragraph numbered 8 of the bill of complaint, this defendant admits that the Second National Bank is a body corporate maintaining an office and doing a general banking business in the District of Columbia, but says that it has no knowledge respecting the other allegations in said paragraph contained.

165 9. Answering paragraph numbered 9 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

10. Answering paragraph numbered 10 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

11. Answering paragraph numbered 11 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

12. Answering paragraph numbered 12 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

13. Answering paragraph numbered 13 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

14. Answering paragraph numbered 14 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

15. Answering paragraph numbered 15 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

16. Answering paragraph numbered 16 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

17. Answering paragraph numbered 17 of the bill of complaint, this defendant states that it does not have any real estate notes, accounts receivable or other assets of the Embassy Apartments, other than as hereinbefore stated in paragraph 7 hereof. This defendant has no knowledge respecting the other allegations therein contained.

18. Answering paragraph numbered 18 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

19. Answering paragraph numbered 19 of the bill of complaint, this defendant is without knowledge of the allegations therein contained.

20. Answering paragraph numbered 20 of the bill of complaint, this defendant is without knowledge of the allegation therein contained.

And having fully answered, defendant prays that the bill of complaint in this cause be dismissed as to it.

THE RIGGS NATIONAL BANK OF
WASHINGTON, D. C.,

By A. M. NEVIUS,
Vice-Prest.

HOGAN, DONOVAN, JONES, HARTSON
& GUIDER,

By ARTHUR J. PHELAN,
*Attorneys for Defendant, The Riggs National
Bank of Washington, Defendant.*

166 DISTRICT OF COLUMBIA, ss:

I, A. M. Nevius, do solemnly swear that I am the Vice President of the Riggs National Bank; that I have read the annexed answer of the said the Riggs National Bank by it

by me subscribed; that the statements of fact therein made as upon personal knowledge are true, and those made upon information and belief I believe to be true.

A. M. NEVIUS.

Subscribed and sworn to before me this 7th day of December, 1934.

GEORGE E. MORRIS,
Notary Public.

167 *Motion for a Receiver for 996 Shares of Stock of the
H. R. Howenstein Co.*

Filed Feb. 11, 1935.

Comes now the plaintiff in the above entitled cause, by her counsel of record in said cause, and moves the Court to appoint a receiver for 996 shares of the stock of the H. R. Howenstein Co., now in the name and possession of the defendant, Katherine M. Howenstein, or, in the alternative, to appoint a receiver for all property and assets of the H. R. Howenstein Co., and for all property in the name of Herman R. Howenstein or Katherine M. Howenstein; and in support thereof we attach hereto certain affidavits.

W. GWYNN GARDINER,
I. IRWIN BOLOTIN,
729 15th St., N. W.,
Attorneys for Plaintiff.

168 *Affidavit of Ralph L. Sabin.*

Filed Feb. 11, 1935.

DISTRICT OF COLUMBIA, ss:

I, Ralph L. Sabin, being first duly sworn on oath, depose and say that I am the husband of the plaintiff Anna S. Sabin; that I have known the defendant Herman R. Howenstein for a good many years, and have had many business dealings with him.

Deponent says that he has been advised and informed, and upon such information and advice states that since the filing of the original bill in this cause by his wife the defendant, Herman R. Howenstein, has sold, or caused to be sold, two promissory notes aggregating the face value of over \$6,000, which notes were the notes of the H. R. Howen-

stein Co., and were held by H. R. Howenstein Co., or by Katherine M. Howenstein, or by the defendant Herman R. Howenstein. Deponent is not advised as to what became of the proceeds from the sale of these notes nor is he advised whether any other notes have been sold, although his wife's counsel advises him that counsel for the defendant Herman R. Howenstein and H. R. Howenstein Co. have advised him that the two notes in question were the only notes sold by H. R. Howenstein since the filing of this suit, and that the proceeds from said notes were used in the conduct of the business of Herman R. Howenstein.

Deponent says he has also been advised and informed, and upon such advice and information states as a fact, that since the obligations upon which judgments were obtained by plaintiff in this suit and by other creditors became due and suit was threatened thereon, and in some instances instituted, the defendant Herman R. Howenstein has
169 directed and instructed those in his employ who were officers of H. R. Howenstein Co. (although he was not a stockholder in H. R. Howenstein Co. and had no authorization so to do) and caused resolutions to be passed declaring dividends on the stock of H. R. Howenstein Co., when the same had not been earned by the company, in considerable amounts, and, to wit, in the neighborhood of about \$10,000; and that there has been paid over to Herman R. Howenstein or to his wife, the defendant Katherine M. Howenstein, upon two occasions, as a result of such action, considerable sums of money, which, upon information and belief, deponent says was in the neighborhood of \$10,000 upon each of two occasions, and that that money has gone out of the assets of H. R. Howenstein Co. and has been turned over to defendant Herman R. Howenstein, or to his wife, and that such action was for the purpose, and the sole purpose, of hindering and defrauding plaintiff in this suit and other creditors similarly situated in the collection of the respective amounts due them on the then obligations of said Herman R. Howenstein.

Deponent says that while he has no definite information or knowledge as to the worth of Herman R. Howenstein or his wife Katherine M. Howenstein, he states that as a business man, having done business in Washington for more than eighteen years, the general reputation of Herman R. Howenstein was that he was a man of large means, that he has lived well, and has conducted a large business; and that

the defendant Herman R. Howenstein has advised this deponent upon more than one occasion that he was worth more than a million and a quarter, which statements were lastly made or repeated to him within a period of three years of this date. Deponent says that he is now advised by his wife's counsel that the defendant Herman R. Howenstein, through his counsel, is contending that he (Howenstein) has no means and would not be able to pay his creditors more than five cents on the dollar.

170 Deponent says that by reference to the original bill in this cause it will be seen that the H. R. Howenstein Co. held title to a great number of houses and unimproved real estate, some of which are encumbered with one trust only, some of which are encumbered by two trusts, and some of which are unencumbered.

Deponent says that the H. R. Howenstein Co. is now operating and carrying on quite an extensive business, and has quite a considerable rental business, and he believes that it would not be to the interest of the creditors to have a receiver appointed for the property itself, but that if a receiver were appointed for the stock it would then give the court control over the business, and this without interfering with the conduct of the business itself, the goodwill of which is worth considerable in the opinion of deponent. Deponent likewise says that from time to time the properties of H. R. Howenstein Co. are being sold by agents in the office and that contracts of sale have been signed already in two instances by agents of the company, which have been accepted on behalf of the company, but the title to which could not be passed by reason of this suit, and that counsel for deponent's wife, upon advice of deponent, has agreed to release two particular properties from the effect of this suit conditioned that the money be deposited to the credit of counsel representing the respective parties to be held by them awaiting the final determination of the cause. This has caused delay and confusion, and is causing expense to deponent because in each instance he must independently and at his own expense determine the value of the property, the amount of trusts, and whether or not the selling price is fair and proper under all circumstances.

Deponent further says, upon information and belief, that there are one thousand shares of stock in H. R. Howenstein Co. That 996 of said shares are held on the books of the

company in the name of the wife, the defendant Katherine M. Howenstein; and four shares in the name of E. Catesby Rowzee. And that said corporation is a corporation incorporated under and deriving its existence from the laws of the District of Columbia. That E. Catesby Rowzee while named as president of the Company, and who is signing papers as president, is, in fact and effect, nothing but an employee of Herman R. Howenstein, and selected by him as president so that he (Howenstein) may direct the affairs of the Company without being an officer and in order to mislead the public as to the ownership of said corporation.

Deponent says that this information he alleges on information and belief, but he verily believes the facts stated herein to be true.

Further deponent sayeth not.

RALPH L. SABIN.

Subscribed and sworn to before me this 6th day of February, A. D. 1935.

MARTIN J. QUIGLEY,
Notary Public, D. C.

W. GWYNN GARDINER,
I. IRWIN BOLOTIN,
Attorneys for Plaintiff.

172 *Memorandum Overruling Motion for Appointment of Receiver.*

Filed Jun. 14, 1935.

This is a judgment creditor's bill wherein it is sought to set aside alleged fraudulent transfers of property, both real and personal, made by the judgment debtor, Herman R. Howenstein, and to subject such property to the payment of the judgment.

The plaintiff, Anna S. Sabin, obtained judgment against the defendant, Herman R. Howenstein, in the Supreme Court of the District of Columbia on the 21st day of October, 1933 for the sum of \$50,000. Subsequently, and on the 27th day of February, 1934, she likewise obtained judgment against Howenstein in the sum of \$15,000. On October 5th, 1934, writs of *fiери facias* were issued and delivered to the United States Marshal, and thereafter returned

nulla bona. The bill was filed in this court November 10th, 1934.

By leave of court, J. Barrett Carter, a judgment creditor, filed his intervening petition on the 22d day of November, 1934. He, also, seeks to subject the property of the judgment debtor to judgments of \$32,000 and \$10,000, rendered on the 19th day of September, 1933, by this court. Writs of *fieri facias* were issued on these judgments and delivered to the United States Marshal on the 15th
173 day of November, 1934, and thereafter duly returned by the marshal *nulla bona*.

The defendants filed their separate answers to the bill and intervening petition in December, 1934.

On the 11th day of February, 1935, the plaintiff filed a motion for the appointment of a receiver for 996 shares of the stock of the H. R. Howenstein Company, or, in the alternative, for all of the property and assets of the H. R. Howenstein Company and for all of the property in the name of Herman R. Howenstein and Katherine Howenstein.

This motion was scheduled for hearing before the judge holding Motions' Court on the 25th day of February, 1935, but the hearing was continued to March 4th, 1935. The H. R. Howenstein Company filed its voluntary petition in bankruptcy February 23d, 1935, and was duly adjudged a bankrupt on that day.

The motion for the appointment of a receiver regularly came on for hearing on the 4th day of March, 1935, and the court was then orally advised of the bankruptcy proceeding by counsel for the defendant, Howenstein Company, and it was contended on behalf of that company that the adjudication deprived the Equity Court of all jurisdiction to further proceed in the matter of the bill and the motion for the appointment of a receiver. At this time a trustee had not been appointed for the bankrupt corporation.

The questions presented on the oral argument and in the briefs submitted by counsel are first, whether or not the filing of the petition and the adjudication in bankruptcy oust the jurisdiction of this court; second, whether the liens asserted by the plaintiff attached from the date of the judgments, and, therefore, not within four months prior to the adjudication, or date from the filing of the bill and, there-

fore, within that period; and, third, whether or not a receiver should be appointed herein pendente lite.

174 The jurisdiction of the bankruptcy court is exclusive within the field defined by law, and all property in possession of the bankrupt of which it claims ownership passes, upon the filing of the petition, into the custody of that court. Liens cannot therefore be obtained nor proceedings be had in other courts to reach the property, the district court having acquired the exclusive right to administer all property in the bankrupt's possession. *Straton v. New*, 283 U. S. 318; *Ex parte Baldwin*, 291 U. S. 610; *Taylor v. Sternberg*, 293 U. S. 470. However, where a creditor has obtained a judgment constituting a lien on the real estate of the defendant more than four months prior to the initiation of the bankruptcy proceeding, and, prior to that proceeding, has instituted a creditor's suit to enforce the lien and sell the real estate subject thereto, the subsequent bankruptcy of the defendant does not oust the state court of jurisdiction, or vest in the court of bankruptcy power to enjoin further proceedings in the state court. *Straton v. New*, supra. In construing §67 (f) of the Bankruptcy Act, 11 U. S. C. A. §107, the Supreme Court in *Metcalf v. Barker*, 187 U. S. 165, at page 174 of the opinion, said:

“In our opinion the conclusion to be drawn from this language is that it is the lien created by a levy, or a judgment, or an attachment, or otherwise, that is invalidated, and that where the lien is obtained more than four months prior to the filing of the petition, it is not only not to be deemed to be null and void on adjudication, but its validity is recognized. * * * A judgment or decree in enforcement of an otherwise valid preexisting lien is not the judgment denounced by the statute, which is plainly confined to judgments creating liens.”

This language was quoted with approval by Mr. Justice Roberts in *Straton v. New*, supra.

In view of the authorities cited, the jurisdiction of this court is ousted by the bankruptcy proceedings if the lien of the judgments dates from the filing of the bill.

175 The bill was filed on the 10th day of November, 1934, within four months of the filing of the petition and adjudication in bankruptcy. On the contrary, if the plaintiff acquired a valid lien upon the rendition of the judg-

ments, then such lien is not affected by the bankruptcy proceeding because rendered more than four months prior thereto.

Title 24, § 323 of the Code of the District of Columbia provides:

“Every final judgment at common law and every unconditional final decree in equity for the payment of money from the date when the same shall be rendered, * * * shall be a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by such judgment, decree or recognizance, in any lands, tenements, or hereditaments in the District, whether such estates be in possession or be reversions or remainders, vested or contingent but such liens on equitable interests shall be enforced by bill in equity.”

The bill is filed for the purpose of enforcing the liens of the judgments against the equitable interests of the debtor, Herman R. Howenstein, in the property transferred and conveyed by him “with the intent to hinder, delay or defraud” existing and future creditors. Such a conveyance is void. Title 11, Code D. C., §11. It is not the purpose of the bill to establish a lien. The lien came into being upon the rendition of the judgment. *Metcalf v. Barker*, *supra*; *Clark v. Larremore*, 188 U. S. 486.

The conclusion follows that the jurisdiction of this court has not been ousted by the bankruptcy proceedings. Furthermore, since the defendant, Herman R. Howenstein, also has been adjudicated a bankrupt, it is doubtful whether the bankrupt defendant, Howenstein Company, to whom it is alleged the property was fraudulently transferred, may attack the jurisdiction of this court. “Bankruptcy proceedings do not, merely by virtue of their maintenance, terminate an action already pending in a non bankruptcy court, to which the bankrupt is a party.” *Connell v. Walker*, 291 U. S. 1. In that case the bankrupt sought to stay proceedings in a state court of North Dakota to
176 set aside a fraudulent conveyance of the bankrupt.

The court held that “the bankrupt alone can not invoke a judgment which would preclude the exercise of the privilege reserved to the trustee to assert rights under the lien.”

Herman R. Howenstein was adjudicated a bankrupt March 4th, 1935. On the 5th day of March, 1935, he filed in this proceeding a "supplementary answer and affidavit" in opposition to the motion for the appointment of a receiver. In this pleading, he alleged that his wife has assigned to him the 996 shares of the capital stock of H. R. Howenstein Company, and "that in compliance with Rule Number Five (5) of the Bankruptcy Rules of the Supreme Court of the District of Columbia," he turned over the stock to his attorneys, with instructions to surrender the same to the trustee in bankruptcy, "he having been adjudged a voluntary bankrupt by the Supreme Court of the District of Columbia on March 4, 1935."

The trustee of Herman R. Howenstein, bankrupt, has the privilege to elect to prosecute this suit for the benefit of the bankrupt's estate under Section 70 (e) of the Bankruptcy Act, Title 11 U. S. C. A., § 110 (e). In the absence of such an election the creditor may maintain the suit. *Connell v. Walker*, supra.

The court is of opinion that there is no necessity for the appointment of a receiver pendente lite in this proceeding.

The motion for the appointment of a receiver is denied.

O. R. LUHRING,
Justice.

June 14, 1935.

177 *Order Overruling Motion for the Appointment of a Receiver.*

Filed Jun. 21, 1935.

Upon consideration of the motion of Anna S. Sabin filed herein the 11th day of February, 1935, for the appointment of a receiver for 996 shares of stock of the H. R. Howenstein Company, or, in the alternative, the appointment of a receiver for all the property and assets of the H. R. Howenstein Company and for all the property in the name of Herman R. Howenstein or Katherine M. Howenstein, and after argument by counsel for the respective parties, it is, by the court, this 21st day of June, A. D. 1935,

Ordered and decreed that the said motion be and the same hereby is denied.

By the Court.

O. R. LUHRING,
Justice.

178 In the Supreme Court of the District of Columbia,
Holding a Bankruptcy Court.

In Bankruptcy, No. 3184.

In re H. R. HOWENSTEIN Co., a Corporation, Bankrupt.

Petition and Motion to Vacate the Order of This Court Adjudicating the H. R. Howenstein Co., a Corporation, a Bankrupt on Its Voluntary Petition and to Set Aside Said Bankruptcy Proceeding.

Filed Mar. 29, 1935.

The petition of Anna S. Sabin respectfully represents to this Honorable Court:

1. That she is a citizen of the United States, a resident of the District of Columbia, and files this petition as a creditor of the H. R. Howenstein Co., as will more particularly hereinafter be shown in this petition.

2. That on the 23rd day of February, 1935, a voluntary petition in bankruptcy was filed in this cause and an adjudication was had on said date, without notice to any of the creditors or without any information to any of the creditors that such a proceeding had been filed. The petition so filed is respectfully referred to herein and made a part hereto as fully as if set forth in detail herein, it being of record in this case. That in and by said petition the corporation avers that it is a corporation incorporated under and by virtue of the laws of the District of Columbia, and that for six months next immediately preceding the filing of said petition its principal place of business and office was at 1315 H Street, Northwest, in the District of Columbia; that it owes debts which it is unable to pay in full; that it is willing to surrender all of its property for the benefit of its creditors, and desires to obtain the benefit of the Acts of Congress relating to bankruptcy, and that
at a meeting of the Board of Directors duly called

179 and held on the 19th day of February, 1935, a resolution was passed in which E. Catesby Rowzee, the president of said corporation, was authorized and directed to file such petitions and proceedings as was necessary to adjudicate the corporation a bankrupt, and appointing the

firm of Tobriner, Graham, Brez & Tobriner as attorneys for that purpose.

There were no schedules filed or presented to the Court at that time, nor when the order for adjudication was entered, nor were any schedules filed until several days thereafter. [When said schedules were filed they showed upon their face that the said corporation was not insolvent, and should not be adjudicated a bankrupt, and that said attempt on the part of said corporation to adjudicate the said corporation a bankrupt was for the purpose of embarrassing your petitioner as a creditor of H. R. Howenstein individually, and as a creditor of this corporation, and that the whole proceeding was and is a fraud upon the Bankruptcy Act, and an abuse of process of this Court.]

3. Petitioner says that by reference to the schedules filed in this case it will be noted that the only debts of the corporation were taxes overdue on real estate amounting to \$7,700, and unsecured claims amounting to \$8,900, which unsecured claims, as shown by the analysis of said schedule, consist of notes due the Riggs Bank for \$2,700; a note due George E. Walker for \$2,400; and note due the Second National Bank for \$3,800. That in an answer filed in December, 1934, by the Second National Bank in Equity Cause No. 57936 in this Court, the Second National Bank claims a balance due it at that time on this note of \$4,000, but says that the note was the note of Herman R. Howenstein, individually, endorsed by the H. R. Howenstein Co., but it claims a lien on moneys on deposit with the said bank against said note. [Petitioner upon information and belief also avers that neither the Riggs National Bank, nor George E. Walker, nor the Second National Bank, were demanding payment of said indebtedness, or any of said indebtedness, other than the usual demands for payment of a curtail on renewal of said notes on each due
180 date, towit, every three months.]

4. Petitioner says that it will be noted, therefore, that there was not a single obligation of any kind outstanding other than these items, whereas the corporation owned real estate which is admitted by the schedule to be worth \$608,238.57; promissory notes (which we are advised are in most part at least secured by real estate trusts) of \$86,322.40; debts due on open account \$11,775.46; deposits in bank of \$3,200.87; and in addition thereto it is shown by

said schedule that the creditors (it does not state whether it refers to these banks listed as unsecured claims) hold second trust notes of the value of \$41,094.41, against secured notes of \$24,516.14. Petitioner is advised upon information and belief, and therefore charges that the real estate which they have valued at \$608,238 is worth considerably more, if not far in excess of the estimated value placed on said property in said Schedule A of the Bankruptcy schedule filed in said cause. Petitioner also invites the Court's attention to the fact that the said value at which the real estate is placed is the alleged cost to the alleged bankrupt.

5. [Petitioner says that this voluntary petition was filed without any legal authority so to file, in that the corporation has undertaken to pass a resolution by its Board of Directors; that in fact all of the stock of this corporation, according to the sworn answer of the H. R. Howenstein Co., Herman R. Howenstein, E. Catesby Rowzee, and others filed in said equity cause No. 57936, in December, 1934, stated that the stock of this company was owned 996 shares by Katherine M. Howenstein, the wife of Herman R. Howenstein, and that four shares were owned by E. Catesby Rowzee.] That the total capital stock of said Company is in fact 1,000 shares, and that said corporation is a District of Columbia corporation, having derived its existence and right, if any, to do business from the laws of the District of Columbia. That therefore, under the laws
181 of the District of Columbia, three directors were required for a corporation of the District of Columbia to function, and that the law also requires that all directors or trustees shall be stockholders, and that therefore there being only two stockholders there could be only two directors, or two trustees, and therefore any action by two persons, directors or trustees, would be void as non-compliance with the law of the District of Columbia.

6. [Petitioner also, upon information and belief, charges that there has been only two stockholders of this corporation for several years last past, and although it is claimed that Herman R. Howenstein attempted to perform acts as secretary and treasurer of said company, he could not in fact perform said acts because he was not a stockholder and could not be an officer without being a stockholder.]

7. Petitioner says this petition was filed on Saturday, February 23, 1935, and was filed for the purpose of em-

barrassing your petitioner in a proceeding then pending on the equity side of the Supreme Court of the District of Columbia, entitled Anna S. Sabin v. Herman R. Howenstein, The H. R. Howenstein Co., Katherine M. Howenstein, E. Catesby Rowzee, and others. [That this Equity cause was instituted in the Supreme Court of the District of Columbia on November 10, 1934, which suit was a Judgment Creditor's Bill for the purpose of enforcing two liens theretofore existing against all of the property of Herman R. Howenstein, Katherine M. Howenstein and The H. R. Howenstein Co. on two judgments obtained on the 21st of October, 1933, and on February 27, 1934, respectively, and executions issued thereon on the 5th of October, 1934, as to both of said judgments, and that said executions were returned nulla bona, which established a lien on all of said property.] That in said suit it was charged that the 996 shares of stock held in the name of Katherine M. Howenstein were in fact the property of Herman R. Howenstein

182 and that the same had been transferred to Katherine M. Howenstein, the wife of Herman R. Howenstein, without consideration, and after the obligations upon which the judgments were obtained had been incurred by Herman R. Howenstein. And, further, that all of the property and assets of the H. R. Howenstein Co. was in fact the property of Herman R. Howenstein; that he had transferred the same to the corporation without consideration after incurring the obligations to the petitioner upon which these two judgments were obtained on the dates set forth above; and that assets belonging to Herman R. Howenstein had gone into the possession of the wife after said obligations were incurred. That answers to these suits had been filed in which it was admitted that the stock in question had been transferred without consideration and after the obligations had been incurred. They admitted the transfer of the real estate after the obligations had been incurred but asserted that the same had always been the property of The H. R. Howenstein Co. but was carried in the name of H. R. Howenstein individually for business purposes.

8. After these answers were filed, a motion was filed with an affidavit, showing additional facts, to wit, namely, that there had been two dividends of \$10,000 each declared, and \$20,000 had passed out of the corporation to Howenstein and his wife, or one of them, when the same had not been

earned, and that the same was done for the purpose of hindering and defrauding your petitioner and other creditors. And in this motion and affidavit there was likewise set forth the fact that there were only two stockholders and that the corporation could not function because under the law three were required, and that any directors or officers other than the stockholders, if elected, were illegally elected, and their acts were void. There was an answer filed to this in which they claimed that there were three officers and directors, but did not declare that they were stockholders. They, in fact, made no denial of any of the

183 facts, and the matter was then, under the practice in vogue in the District of Columbia at the time, set down for hearing on the Motion Calendar, to be heard by the Motion Judge, and notice had gone forward to the parties representing Howenstein and his wife and the corporation, Messrs. Tobriner, Graham, Brez & Tobriner, and to counsel representing Anna S. Sabin, your petitioner, notifying them that the case would be heard by the Judge at 10 o'clock on Monday, February 25, 1935; and that on Saturday, February 23, 1935, without notice to anyone, this petition in bankruptcy was filed by the same counsel representing the parties in the Equity Cause, and presented to Mr. Justice Bailey, who signed an order adjudicating the corporation a bankrupt. Mr. Justice Luhring at that time was sitting in the Motions Court.

9. [Your petitioner is advised that the Equity Court has exclusive jurisdiction of all of this property, and that the filing of said petition in bankruptcy, and the obtaining of said adjudication, was in violation of the proceedings pending in the Equity Court, and, therefore, in contempt of that Court. And that said proceeding was further a fraud upon the Court and an abuse of process of the Court, and was filed manifestly for the purpose of embarrassing this petitioner, a creditor to the extent of many thousands of dollars.]

10. Petitioner further says that she is likewise a direct creditor of The H. R. Howenstein Co., a corporation; that she holds and owns a \$3,000 note made by The H. R. Howenstein Co., the alleged bankrupt, to Dorothy N. French, and endorsed by Dorothy N. French without recourse, and that a deed of trust on Lots 44-45-46-47-48-49, Square 3566, was executed to secure said notes; that the taxes on said lots

have not been paid for the years 1932 and 1933, and the said property was sold for non-payment of taxes to the District of Columbia, and that taxes for the year 1934, on said lots and each of said lots, were not paid, and the same were sold for taxes to the District of Columbia; and that taxes on said lots were not paid for the first half of 184 1935. That under the terms of the deed of trust your petitioner has the right, as the holder and owner of said note so secured, to pay said taxes with penalties and costs, in order to redeem said property from said tax sales, and that she did pay said sums, and all of said sums, and that The H. R. Howenstein Co. is directly indebted to her for said sums so paid.

Therefore, premises considered, petitioner prays:

1. That all proper process and rules issue out of this Honorable Court to the H. R. Howenstein Co., a corporation, to Herman R. Howenstein, individually, to Katherine M. Howenstein, to E. Catesby Rowzee, and to John A. Reilly, the party heretofore appointed by the Referee in Bankruptcy as the trustee in bankruptcy of this corporation, making them all parties to this cause, and directing them to appear and answer this petition.

2. And that such testimony be taken upon the issues tendered by this petition, and all other proceedings may be had, and orders entered, as are necessary to fully carry out said order or decree to be entered by this Court in this Cause revoking, vacating and setting aside the order of adjudication, and the order of dismissal in bankruptcy.

3. And that upon final hearing of this cause a decree may be passed herein revoking, vacating and setting aside the order of adjudication and dismissing the said petition filed in this cause.

4. And for such other, further and general relief as to the Court may seem just and proper.

ANNA S. SABIN,
Petitioner.

W. GWYNN GARDINER,
I. IRWIN BOLOTIN,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, ss:

Anna S. Sabin, being first duly sworn, on oath deposes and says that she has read the foregoing petition by her

subscribed and knows the contents thereof; that the matters and things therein stated as of her own knowledge are true; and those matters and things therein stated as upon information and belief, she believes to be true.

ANNA S. SABIN.

Subscribed and sworn to before me this 28th day of March, 1935.

JASON B. CAUKIN,
Notary Public, D. C.

185 *Motion to Revoke, Vacate and Set Aside the Order of Adjudication in this Cause.*

Filed Mar. 29, 1935.

Comes now Anna S. Sabin, a creditor of The H. R. Howenstein Co., an alleged bankrupt, and moves the court to enter an order herein revoking, vacating and setting aside the order of adjudication entered in this cause under date of February 23, 1935, and for reasons therefor says:

1. That the bankruptcy court has no jurisdiction in the premises, because the bankrupt was not in existence at the time the petition was entered and adjudication had.

2. That the bankruptcy court has no jurisdiction in the premises because the attempted action of the Board of Directors in undertaking to pass the resolution appearing in said petition was illegal and void in that there was no legal power or right in these two stockholders as directors to pass such a resolution or to authorize a petition in bankruptcy to be filed.

3. That the bankruptcy court has no jurisdiction in the premises because it is not shown by said resolution that there was any action by the stockholders, or any notice to the stockholders, or any notice to any of the creditors.

4. That the bankruptcy court has no jurisdiction because said property and all of the property of the bankrupt, was then in the custody and control of the Equity Court of the Supreme Court of the District of Columbia, in Equity Cause No. 57936, entitled Anna S. Sabin v. Herman R. Howenstein, The H. R. Howenstein —, Katherine M. Howenstein, E. Catesby Rowzee, and others; and that said petition in

186 bankruptcy was filed in violation of the proceedings
then pending in the Equity Court, and therefore in
contempt of that court.

5. That the said petition was unnecessary and vexatious
and an interference with the jurisdiction of the equity court
which court had previously acquired jurisdiction of the res.

6. That the filing of said petition was merely an attempt
on the part of the bankrupt to hinder, delay, defraud and
harass this creditor and to prevent the equity court from
appointing a receiver, and was a fraud upon this court and
an abuse of the process of this court.

That the petition of this creditor filed in this cause this
day is hereby made a part of this motion and in support of
the points made herein.

W. GWYNN GARDINER,
I. IRWIN BOLOTIN,
JAMES M. EARNEST,

729 15th St. N. W.,

Attorneys for Petitioner, Anna S. Sabin.

187 *Answer of John A. Reilly to Petition of Anna S.
Sabin to Vacate Adjudication.*

Filed Apr. 4, 1935.

The answer of John A. Reilly to the petition of Anna S.
Sabin to vacate the adjudication respectfully shows to the
court as follows:

2. Answering paragraph two of said petition, he says,
that the schedules were not required under the law to be
filed simultaneously with the filing of the petition in bank-
ruptcy. He denies that the schedules show upon their face
the said corporation was not insolvent; he denies that the
said schedules upon their face show that the said corpora-
tion should not have been adjudicated a bankrupt. He says
that, even if solvent, the said corporation had the right to
be adjudicated a voluntary bankrupt under the law, if its
proper officers so chose to have its assets distributed and its
liabilities liquidated through the Court of Bankruptcy. He
denies that the proceeding in bankruptcy was or is a fraud
upon the bankruptcy act and denies that the same was an
abuse of the process of this court.

3. Answering paragraph three, the respondent denies the averments thereof, in so far as it attempts to set
188 forth the substance of the schedules filed herein and respectfully refers to said schedules. Respondent has no information sufficient to form a belief that neither Riggs National Bank, nor George E. Walker, nor the Second National Bank were demanding payment of the indebtedness other than the usual demands for the payment of a curtail on renewal notes and if material calls for strict proof thereof.

4. Respondent denies the averments of paragraph 4 of said petition and respectfully refers to the schedules filed herein. Respondent at this time has no sufficient knowledge to form a belief as to total value of said real estate. Part of this has been appraised in this cause; other parts will be appraised as time will permit. Respondent has made his best effort to estimate the value of said real estate and is of the opinion that the total value is approximately the same as in said schedule. The value of particular parcels is at this time unknown to respondent.

5. Respondent denies that said petition in bankruptcy was filed without legal authority to so file it. He denies, upon information and belief, that the stock of said bankrupt was held on February 19, 1935, as alleged in said petition. He avers that on February 19, 1935, the corporation had three stockholders and three trustees and that at separate meetings of the stockholders and all the trustees, the president of the company was authorized and directed to file a voluntary petition in bankruptcy, which was filed on February 23, 1935.

6. Respondent has no information sufficient to form a belief as to paragraph 6 of said petition and if material calls for strict proof thereof.

7. Upon information and belief, the respondent de-
189 nies that the voluntary petition in bankruptcy was filed for the purpose of embarrassing the petitioner in an equity proceeding mentioned in said paragraph. He denies that said judgment creditor's bill was for the purpose of enforcing the liens theretofore existing and says that it was one for enforcing liens attempted to be created by said judgment creditor's bill. He denies that the judgments referred to in said paragraph were a lien upon the property of this bankrupt, except in so far as they may have

been created by the filing of the creditor's bill. That at that time the bankrupt was insolvent and that the liens were null and void, under the bankruptcy act.

8. That in so far as paragraph eight attempts to set up pleadings filed in other causes in this court, this respondent asks that said pleadings be accepted as his answer to said paragraph eight. He submits that he is not required to answer the remaining averments to paragraph 8.

9. He denies the averments of paragraph nine.

10. Respondent has no information sufficient to form a belief that the petitioner holds a \$3,000 note made by the H. R. Howenstein Company, alleged bankrupt, and the remaining averments with respect to said note contained in said paragraph 10 and if material calls for strict proof thereof. Respondent says that petitioner has not filed any such claim in the bankruptcy proceedings herein.

11. Further answering, respondent says that he desires to claim the same advantage as if he had filed a motion to dismiss for the insufficiency of said petition.

Respondent prays that said petition be dismissed.

JOHN A. REILLY,
Trustee.

H. WINSHIP WHEATLEY,
1010 Vermont Ave., N. W., Washington, D. C.,
Attorney for Trustee in Bankruptcy.

190 DISTRICT OF COLUMBIA, ss:

John A. Reilly, being first duly sworn, on oath deposes and says that he has read the foregoing answer by him subscribed, knows the contents thereof and verily believes the facts stated therein to be true.

JOHN A. REILLY.

Subscribed and sworn to before me this 4th day of April, 1935.

JOHN F. GUTHRIDGE,
Notary Public, D. C.

191 *Answer to the Petition and Motion of Anna S. Sabin to Vacate the Order Adjudicating the H. R. Howenstein Company, a Corporation, a Bankrupt on Its Voluntary Petition and to Set Aside Said Bankruptcy Proceeding.*

Filed Apr. 4, 1935.

The answer of the H. R. Howenstein Company to the petition of Anna S. Sabin filed herein to vacate the order of this Court adjudicating the H. R. Howenstein Company, a corporation, a bankrupt on its voluntary petition and to set aside said bankruptcy proceedings respectfully represents to the Court:

1. It admits that the said Anna S. Sabin is a citizen of the United States and a resident of the District of Columbia.

2. The respondent company admits that on the 23rd day of February, 1935, a voluntary petition in bankruptcy was filed in this cause and adjudication was had on said date, but denies that same was filed without notice to any of the creditors or without any information to any of the creditors that such a proceeding had been filed. It admits that in

and by said petition the corporation avers that it is
192 incorporated under and by virtue of the laws of the District of Columbia and that for six months next immediately preceding the filing of said petition its principal place of business and office was at 1315 H Street, Northwest, in the City of Washington, District of Columbia; and that it has debts which it is unable to pay in full; that it is willing to surrender all of its property for the benefit of its creditors and desires to obtain the benefit of the Acts of Congress relating to bankruptcy and that at the meeting of the Board of Trustees duly called and held on the 19th day of February, 1935, a resolution was passed in which E. Catesby Rowzee, the President of said corporation, was authorized and directed to file such petitions and proceedings as was necessary to adjudicate the corporation a bankrupt and appointing the firm of Tobriner, Graham, Brez & Tobriner as attorneys for that purpose. A similar resolution was duly passed on said 19th day of February, 1935, at a meeting of all the stockholders of this respondent.

It admits that no schedules were filed or presented to the court at the time of the filing of the petition, nor when the

order for adjudication was entered. It avers that, under the provisions of the Bankruptcy Act, it was not necessary to so file schedules. It admits that schedules were filed several days thereafter. It denies that when said schedules were filed, they showed upon their face that the said corporation was not insolvent or that this respondent should not have been adjudicated a bankrupt. It avers that even if solvent, it had the right to be adjudicated
193 a voluntary bankrupt if its trustees and stockholders chose to have its assets distributed and liabilities liquidated by and through the court of bankruptcy. It denies that the filing of its said voluntary petition in bankruptcy was for the purpose of embarrassing petitioner as a creditor of Herman R. Howenstein individually or as a creditor of this corporation, and vigorously denies that the whole proceedings or any part thereof was or is a fraud upon the Bankruptcy Act or an abuse of process of this Court.

Further answering said paragraph 2, this respondent says that when on November 10, 1934, the petitioner, Anna S. Sabin, instituted in this Honorable Court the equity cause entitled "Anna S. Sabin vs. Herman R. Howenstein, The H. R. Howenstein Company, Katherine M. Howenstein, E. Catesby Rowzee," and others, referred to in the seventh paragraph of said petition, the bill of complaint in detail set forth a large list of real estate which it was averred had been by the defendant, Herman R. Howenstein, conveyed to the H. R. Howenstein Company in fraud of his creditors, and prayed, among other relief, that such conveyance be set aside so that the real estate thereby conveyed could be sold and the proceeds applied to the satisfaction of the judgments against Herman R. Howenstein held by the plaintiff. To this bill all the defendants above named filed answers, denying the alleged fraud and explaining the matter of
said conveyance. Respondent refers to said answers
194 and prays leave to read the same or such parts as may be material at any hearing of this proceeding. As a consequence of the institution of the said equity proceeding and the listing of said real estate as aforesaid, this respondent was unable to sell or dispose of any piece of said real estate for the purpose of paying maturing liabilities or current expenses of its business because of the refusal of the title companies to pass the title as unencumbered by the said equity cause; its business and operations

were brought to a standstill and nothing remained for its trustees and stockholders to do but institute proceedings looking to an equal distribution and liquidation of its liabilities among its creditors without preference, and this end could in the opinion of respondent's counsel be best obtained by proceedings in bankruptcy wherein no preferences would be permitted.

3. The respondent company denies that by reference to the schedules filed in this case it will be noted that the only debts of the corporation were taxes overdue on real estate amounting to \$7,700.00, and unsecured claims amounting to \$8,900.00, or that the unsecured claims as shown by the analysis of said schedules consist of notes due the Riggs National Bank, George E. Walker or the Second National Bank. It admits that in an answer filed in December, 1934, by the Second National Bank, in Equity Cause No. 57,936, the Second National Bank claims a balance due it at that time on this note of \$4,000.00, and says

195 that the note was one of Herman R. Howenstein individually, endorsed by the H. R. Howenstein Company, and that it claims a lien on monies on deposit with the said bank against said note. This respondent avers, however, that at the time of the filing of the said petition, it was indebted to the said bank in the sum of \$3,800.00, and that it had none of its own monies on deposit in said bank on which the said bank might claim a lien. Respondent admits that neither the Riggs National Bank nor George E. Walker nor the Second National Bank were demanding full payment of their respective indebtednesses, but avers that said creditors were demanding larger curtails than the said corporation was able to make. It avers, however, that the receiver for the Federal-American National Bank and Trust Company was making demand upon the said H. R. Howenstein Company for the liquidation of its indebtedness to him.

4. Respondent denies, as averred in paragraph 4 of said petition, that it will be noted from said bankruptcy schedules that there was not a single obligation of any kind outstanding other than items mentioned by your petitioner, and says that the bankruptcy schedules speak for themselves. It denies that the schedules show that the corporation owns real estate which is admitted to be worth \$608,238.57, but avers that the said bankrupt corporation has placed no value on said real estate but has only stated the

cost to it of the same. It admits that the said schedules show among the assets of this respondent promissory
196 notes secured on real estate of \$86,322.40; debts due respondent on open account, \$11,775.46; deposits in bank and cash on hand, \$3,200.87, and that certain creditors hold of the above \$86,322.40, second trust notes of the face value of \$41,094.41, as collateral for this respondent's notes of \$24,516.14. Respondent denies that the real estate which is carried on said schedules at a cost to it of \$608,238.00 is worth considerably more or far in excess of the cost value placed on said property in said Schedule B of the bankruptcy schedules filed herein. Respondent avers that the said real estate will possibly bring much less than its original cost to this respondent. This respondent says that said real estate is subject to first, or first and second deeds of trust securing the aggregate sum of \$547,367.36; that it is uncertain that the amount realized from sale or foreclosure of said real estate will be sufficient to liquidate the amounts secured by said trusts, and there is possible danger of deficiency claims and judgments against respondent because thereof.

5. The respondent denies that its voluntary petition was filed without any legal authority, in that the corporation undertook to pass a resolution by its Board of Trustees. It admits that according to the sworn answers of the H. R. Howenstein Company, Herman R. Howenstein and E. Catesby Rowzee, filed in said Equity Cause No. 57,936, in December, 1934, they stated that Katharine M. Howenstein, the wife of Herman R. Howenstein, owned 996 shares, and
197 that E. Catesby Rowzee owned 4 shares of the stock of said company out of a total capital stock of said company of 1,000 shares, but denies that the stock was so held or that the record in said Equity Cause shows that the stock was so held on February 19, 1935, when said resolution authorizing and directing the bankruptcy proceedings was passed. Respondent avers that on February 19, 1935, the said corporation had three stockholders and three trustees, and that at separate meetings of all of the stockholders and all of the trustees of said company, the President of said company was authorized and directed to file a voluntary petition in bankruptcy, which was filed on February 23, 1935.

6. Respondent is advised that paragraph six of said petition is irrelevant and immaterial, and that it is not required to answer same.

7. Respondent denies that its voluntary petition in bankruptcy was filed for the purpose of embarrassing your petitioner in a proceeding then pending in the equity side of the Supreme Court of the District of Columbia, entitled Anna S. Sabin v. Herman R. Howenstein, The H. R. Howenstein Company, Katherine M. Howenstein, E. Catesby Rowzee, and others. It admits that said equity proceeding was instituted in this Honorable Court on November 10, 1934, but denies that it was a judgment creditor's bill for enforcing any liens *theretofore* existing against all of the property of Herman R. Howenstein,

Katherine M. Howenstein and the H. R. Howenstein
198 Company on two judgments obtained as set forth in paragraph seven of said petition. It denies that the said judgments established a lien on all or any of said property. As to what said suit charged and what said answers admitted, respondent says that said suit and answers speak for themselves.

8. Respondent admits that after the filing of the answers to said suit, a motion was filed by the petitioner herein with an affidavit attached, averring that there had been two dividends of \$10,000.00 each declared, but this respondent avers that said affidavit does not state when such dividends were declared, and that in reply to said affidavit, it says that an answer was filed by the H. R. Howenstein Company showing that no dividend had been declared since June 28, 1933. As to what the said motion and affidavit further set forth, respondent says that same speak for themselves, and reiterates that at the time of passing the said resolution, authorizing the President of said company to file a voluntary petition on behalf of said company, that the corporation had then and still has three stockholders and three trustees, and that both the stockholders and the trustees of said corporation unanimously authorized on February 19, 1935, the filing on behalf of respondent, of the voluntary petition in bankruptcy. It denies that it received notice that said case would be heard by the Judge of the Motions Court at ten o'clock on Monday, February 25, 1935, but admits that it did receive such a

notice as to a hearing on the application of said petitioner for a receiver for this respondent. It further admits that on said February 23 it filed its petition in bankruptcy by the same counsel that represented it in the equity action, but denies that it was without notice to any one. It avers that it was not obligated or required by law to give notice to any one as intimated by the said petitioner. It admits that the petition was presented to Mr. Justice Bailey, who signed an order adjudicating the corporation a bankrupt, but denies that Mr. Justice Luhring on that date was sitting in the said Motions Court.

9. Respondent denies each and every allegation of paragraph nine of said petition.

10. Respondent denies, as set forth in paragraph ten of said petition, that petitioner holds and owns a \$3,000.00 note made by the H. R. Howenstein Company, the alleged bankrupt, but says that the said petitioner holds six \$500.00 notes, not made by the H. R. Howenstein Company, but made by Herman R. Howenstein individually. It admits that the taxes on the property secured by said notes are in arrears and that same was sold for taxes to the District of Columbia. Respondent is not informed whether said petitioner had the right as the holder and owner of said notes to pay the overdue taxes or whether she did pay the same, and if the allegation to that effect set forth in paragraph ten of said petition is material, calls for strict proof thereof.

200 All other allegations of said petition not specifically answered, are denied.

Respondent shows to the court that the said petitioner has not filed any claim in said bankruptcy proceedings either as a secured or unsecured creditor, and that she has no standing in said cause until a claim has been filed by her and allowed.

And now having fully answered, respondent prays to be hence dismissed.

H. R. HOWENSTEIN COMPANY,
By E. CATESBY ROWZEE,
President.

TOBRINER, GRAHAM, BREZ & TOBRINER,
By SELIG C. BREZ,
Attorneys for Respondent,
Suite 932, Southern Building.

DISTRICT OF COLUMBIA, ss:

I, E. Catesby Rowzee, being first duly sworn, on my oath do depose and say that I have read the foregoing answer by me subscribed and know the contents thereof; that the matters and things therein stated upon my personal
201 knowledge are true, and those stated upon information and belief, I believe to be true.

E. CATESBY ROWZEE.

Subscribed and sworn to before me this 3rd day of April, A. D. 1935.

CHARLES W. STEERS,
Notary Public in and for the District of Columbia.

202 *Counter Designation of Record.*

Filed Jul. 9, 1935.

The Clerk will please include in the record the additional following:

1. Bill of complaint filed on November 10, 1934, in the Supreme Court of the District of Columbia, the same being Equity Cause No. 57936, entitled Anna S. Sabin v. Herman R. Howenstein, et al.

2. Answer of the defendant Herman R. Howenstein in said Equity Cause No. 57936.

3. Answer of defendant H. R. Howenstein Co. in said Equity Cause No. 57936.

4. Answer of defendant Katherine M. Howenstein in said Equity Cause No. 57936.

5. Answer of E. Catesby Rowzee in said Equity Cause No. 57936.

6. Answer of defendant Second National Bank in said Equity Cause No. 57936.

7. Answer of defendant American Security & Trust Company in said Equity Cause No. 57936.

8. Answer of Riggs National Bank in said Equity Cause No. 57936.

9. Intervening petition of J. Barrett Carter filed in said Equity Cause No. 57936, on November 22, 1934.

10. Motion of Anna S. Sabin for appointment of a receiver filed in said Equity Cause No. 57936, on February 11, 1935, and affidavit of Ralph L. Sabin filed
203 with said motion.

11. Notation of schedule for oral hearing of said motion for appointment of receiver for February 25, 1935.

12. Notation of continuance of said oral hearing of said motion for appointment of receiver to March 4, 1935.

13. Memo. of oral hearing on said motion for appointment of a receiver on March 4, 1935.

14. Opinion of Court overruling said motion for appointment of receiver, filed in said Equity Cause No. 57936 on June 14, 1935.

15. Order of June 21, 1935, in said Equity Cause No. 57936 denying said motion for appointment of a receiver.

16. Petition of Anna S. Sabin to vacate the order adjudicating the H. R. Howenstein Co. a bankrupt and to set aside the bankruptcy proceedings, filed in Bankruptcy No. 3184.

17. Motion of Anna S. Sabin to revoke, vacate and set aside the order of adjudication filed in the Bankruptcy Cause No. 3184.

18. Answer of John A. Reilly to petition of Anna S. Sabin to vacate the adjudication filed in Bankruptcy Cause No. 3184.

19. Answer of H. R. Howenstein Co. to petition and motion of Anna S. Sabin to vacate the order adjudicating H. R. Howenstein Co., a corporation, a bankrupt, filed in Bankruptcy Cause No. 3184.

20. This counter designation of record.

W. GWYNN GARDINER,

I. IRWIN BOLOTIN,

729 15th St., N. W.,

Attorneys for Respondent Anna S. Sabin.

Service of copy of the foregoing Counter Designation of Record acknowledged this 9th day of July, 1935.

H. WINSHIP WHEATLEY,

Attorney for John A. Reilly,

Trustee in Bankruptcy.

204 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 203, both inclusive, to be a true and correct transcript of the record, according to directions

of counsel herein filed, copies of which are made part of this transcript, in Bankruptcy No. 3184, In re H. R. Howenstein Company, a Corporation, Bankrupt, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 9th day of August, 1935.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 6532. John A. Reilly, Trustee in Bankruptcy of H. R. Howenstein Company, Appellant, vs. Anna S. Sabin, J. Barrett Carter, H. R. Howenstein Co., and Leo N. McGuire, Trustee. United States Court of Appeals for the District of Columbia. Filed Aug. 9, 1935. Henry W. Hodges, Clerk.

(6783-C)

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

SEP 12 1935

RECEIVED

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

No. 6532.

IN RE:

JOHN A. REILLY. Trustee in Bankruptcy of H. R.
HOWENSTEIN COMPANY, *Appellant*

v.

ANNA S. SABIN, J. BARRETT CARTER, H. R. HOWEN-
STEIN COMPANY, and LEO N. MCGUIRE, Trustee,
Appellees

BRIEF FOR APPELLANT

H. WINSHIP WHEATLEY,
Attorney for Appellant

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

No. 6532.

IN RE:

JOHN A. REILLY. Trustee in Bankruptcy of H. R.
HOWENSTEIN COMPANY, *Appellant*

v.

ANNA S. SABIN, J. BARRETT CARTER, H. R. HOWEN-
STEIN COMPANY, and LEO N. MCGUIRE, Trustee,
Appellees

BRIEF FOR APPELLANT

STATEMENT OF FACTS

This record presents appeals under Sections 24 A and B of Bankruptcy Act. That under Section 24 B was specially allowed by this Court to come up on the record with the general appeal taken under Section 24 A of the Act (Rec. 59-60).

The trustee of the H. R. Howenstein Company is the Appellant.

The trustee filed in the Court below (Rec. 32) a pe-

tion reporting an offer for the sale of certain real estate owned by the bankrupt estate. This petition set forth a lien claimed against the real estate by Anna S. Sabin and J. Barrett Carter, appellees, which will be discussed more at length hereinafter. The petition prayed that the real estate be sold free and clear of encumbrance and that the lien, if any, of Anna S. Sabin and J. Barrett Carter be transferred to the fund derived from the sale of said real estate (Rec. 34). The trustee subsequently received a higher offer, for the real estate which he proposed to sell, than that reported in the original petition and this is set forth in a supplement to the petition (Rec. 44). The principle involved in the case is not affected by amounts.

The Court in one order denied the application of the trustee to sell free and clear of encumbrance (Rec. 48-49) and in another order further denied the application of the trustee to restrain and enjoin Mrs. Sabin and Mr. Carter from asserting any lien in the equity proceedings and declined to order that each of them be authorized and directed to assert such lien as they, or either of them, might have in the bankruptcy cause and not elsewhere (Rec. 49). It is from these two orders that the appeals are taken.

The lower Court's opinion with respect thereto is in the Record (Rec. 47-48). The lower Court's opinion in the equity case where in the Court's opinion is given for denying a receiver in equity is also in the Record (Rec. 121-122). They will be further discussed hereinafter.

The lien claims of Mrs. Sabin and Mr. Carter grow out of a judgment creditors' bill filed in the Court below November 10, 1934 (Rec. 62, *et seq.*).

The adjudication in bankruptcy was on February 23,

1935 (Rec. 3). The creditors' bill was therefore filed within four months of the bankruptcy and comes within Section 67F which makes void liens created within such period. Whether such lien was void is one of the ultimate questions that the Court will be required to determine. The petition of the trustee, however (Rec. 32), merely prays that the appellees be restrained and enjoined from proceeding in equity and that they be required to assert such lien, if any, in the bankruptcy court and not elsewhere.

The nature of the lien claim is shown by the creditors' bill which is made a part of the Record (Rec. 62, *et seq.*) Mrs. Sabin secured judgments against Herman R. Howenstein. One judgment was for fifty thousand dollars (\$50,000.00) on October 21, 1933 (Rec. 66). The other was for fifteen thousand dollars (\$15,000.00) on February 27, 1934.

Mr. Carter obtained judgments against Herman R. Howenstein for thirty-two thousand dollars (\$32,000.00) and ten thousand dollars (\$10,000.00) respectively, on September 19, 1933 (Rec. 76).

These judgments were obtained against Herman R. Howenstein, individually, and not against the bankrupt, a corporation.

Writs of *feri facias* were issued on said judgments and were returned "nulla bona" before the filing of the creditors' bill.

Said creditors' bill alleges, upon information and belief, that in November, 1898 (twenty-nine (29) years before the incurring of the obligations of Herman R. Howenstein, individually, as shown by pages 67 and 68 of the Record) the said Herman R. Howenstein established and was engaged in the real estate business in the District of Columbia; that he incorporated the

business in December, 1902, (twenty-five (25) years before he incurred the obligations resulting in the judgments against him); that he turned over all of his assets to the Corporation without receiving any valuable or other consideration therefor and that Howenstein continued to operate his former business under the new corporate name of Howenstein Company; that although he incorporated the business, he was the managing head, director, and sole owner and was such at the time of the filing of the creditors' bill. The bill further alleges, upon information and belief, that Howenstein Company was organized for the purpose of taking over and continuing the business of Howenstein and to defraud, hinder and delay the creditors of Howenstein and to avoid any obligations which Howenstein might incur or which might have been incurred by him; that the Howenstein Company took over and accepted all the assets of the defendant, Howenstein, without giving any valuable or other consideration therefor (Rec. 67-68).

The creditors' bill further alleges (Paragraph 16, Rec. 70), upon information and belief, that as part of the alleged fraudulent scheme, Howenstein had conveyed certain real property to the Howenstein Company without receiving any valuable or other consideration therefor and that the defendant, Howenstein, was still the owner of certain parcels of real estate, which were being held for him in the name of H. R. Howenstein Company, the bankrupt, among which are the parcels for which the Trustee has an offer for sale and which are involved in this case.

The bill prays inter alia (Rec. 74):

“That upon final hearing of this cause, a decree may be entered herein setting aside and declar-

ing of no legal effect the transfer of the properties and all of the properties herein enumerated * * * and that all of said properties * * * be decreed to be subject to the payment of the judgments in favor of the plaintiff in this cause.”

The bill further prays:

“That upon final hearing of said cause, the Court shall enter a decree herein decreeing the real estate * * * now in the name of H. R. Howenstein Company, to be in fact the property of the defendant, Herman R. Howenstein, and that the same be decreed to be subject to the payment of the judgments in favor of the plaintiff in this cause.” (Rec. 74.)

Similar prayers were contained in the intervening petition of Carter (Rec. 78).

Assignment of Errors on Motion Denying Injunction

1. The court erred in denying the motion of the Trustee in Bankruptcy to restrain Anna S. Sabin and J. Barrett Carter from asserting a lien in equity cause No. 57,936 against real estate owned by the bankrupt, and from proceeding with that equity suit in so far as they and each of them may have a claim against real estate owned by the bankrupt.

2. The court erred in not requiring Anna S. Sabin and J. Barrett Carter to assert such lien as they or either of them might have, if any, against the real estate owned by the bankrupt in the bankruptcy court and not elsewhere, and in not transferring the lien, if any, which they or either of them might have against said real estate to the bankruptcy court and requiring that the same be litigated there.

3. The court erred in not enjoining said Anna S. Sabin and J. Barrett Carter, and each of them, from proceeding with said equity suit as prayed.

4. The court erred in entering the order of June 21, 1935, denying the motion and petition of the trustee, praying that the court restrain Anna S. Sabin and J. Barrett Carter from asserting a lien in equity cause No. 57,936 and requiring that such lien, if any, be asserted in the bankruptcy cause.

Assignment of Error on Motion Denying Petition of Trustee to Sell Free and Clear of Encumbrance

1. That the Court erred in passing the order of June 21, 1934, denying the motion of the Trustee in Bankruptcy to sell certain lots free and clear of encumbrance and to transfer the lien of said Anna S. Sabin and J. Barrett Carter, if any, to the proceeds derived from the sale.

2. That the Court erred in not directing the Trustee to sell the lots described in the Trustee's petition filed herein free and clear of encumbrance and to hold the same subject to the orders of the Court:

3. That the Court erred in passing the said order of June 21, 1935.

ARGUMENT

It is manifest that the judgment creditors' bill filed November 10, 1934 (Rec. 62 *et seq.*) by describing therein a number of parcels of land which the bankrupt corporation held in fee simple (Rec. 70-71) created a *lis pendens* against this property. Until that equity suit is disposed of or the lien otherwise relieved, there can be no conveyance or sale of this property. If, by chance, there are mortgages upon it, as

upon much of the property involved in the bankruptcy case, there is nothing the trustee can do to salvage it and he must submit to the foreclosure of such mortgages unless there is some power in the bankruptcy court to relieve him and to permit him to sell free and clear of encumbrance. If, for instance, the lien of Mrs. Sabin and Mr. Carter were mortgage liens, the law is well settled as to the right of the bankruptcy court to enjoin the enforcement of such mortgage liens, allow the trustee in bankruptcy to sell and require the mortgagees to assert their liens in the bankruptcy court and not elsewhere. The court would transfer whatever liens the mortgagees have to the funds in the bankruptcy court and would require that the mortgagees assert their liens therein. Such proceedings are frequent in courts of bankruptcy.

Authorities along this line are hereinafter submitted but the principle is so well fixed as not to require citation thereof.

Wherein does the principle involved in the trustee's petition differ? In one instance the creditor claims a mortgage lien; in the other instance the creditor claims a *lis pendens*. It is not only difficult for this appellant to appreciate any difference in principle but it is also difficult for him to understand wherein the appellees find any advantage for themselves in proceeding with the equity case, if their lien, if any, is transferred to the proceeds of the fund to be realized from the sale of the real estate alleged to be subject to their lien. The trustee has a practical situation to solve. It is his duty to conserve the assets of the bankrupt estate and to get out of them all that he can. If he must refuse advantageous offers for property (in this case, thirty-two hundred and fifty dollars, Rec. 44, for property ap-

praised at twenty-five hundred dollars, Rec. 32-33), and allow taxes to accumulate upon non-income producing property, no advantage is to be had by anybody, much less by the plaintiffs and intervenors in the equity suit. A trustee in bankruptcy has the additional advantage of being able to appeal to the Court to enjoin mortgage foreclosure which relief cannot be sought in the equity proceeding. If the property be sold free and clear of encumbrance, the asserted lien of the equity suit would be transferred to the proceeds of the sale. On the other hand, if the plaintiff in the equity suit can, by his mere objection, tie up this property pending determination of the equity suit in the trial court and a determination of the appeal to this court, the position is advantageous to no one. One position impresses the trustee in bankruptcy as constructive and the other as destructive.

If the alleged liens are required to be litigated in the bankruptcy court, the trustee might therein sell and dispose of the numerous parcels of real estate set forth in the petition and bring the fund into the court subject to the disposition by the court. On the other hand, if the equity suit be permitted to continue the *lis pendens* created by that suit, it bars any disposition or any sale of real estate until after the disposition of any appeal that might be taken from a decree in that suit. There is no power in the equity court to authorize a conveyance of title until after the right, if any, has been adjudicated, and this makes the situation, as far as the sale of the property, indefinite. The analogy to an injunction against a mortgage foreclosure seems to be complete.

The trustee respectfully submits that it is not only in the interest of the creditors of the bankrupt estate

that this litigation ensue in the bankruptcy cause, but that it is to the interest of those who claim the liens. The trustee's position, it is respectfully submitted, is to conserve the assets for whomsoever may be entitled to them.

In the case of *Taylor v. Sternberg*, decided by the Supreme Court of the United States, January 7, 1935 and reported in *Advance Sheets of the Co-operative Publishing Co.*, page 325, the Supreme Court used the following language:

“Upon adjudication in bankruptcy, all the property of the bankrupt vests in the trustee as of the date of the filing of the petition. Upon such filing, the jurisdiction of the bankruptcy court becomes paramount and exclusive; and thereafter that court's possession and control of the estate cannot be affected by proceedings in other courts, whether state or federal. * * * This applies while the possession is constructive as well as when it becomes actual. *Mueller v. Nugent*, 184 U. S.”

In the case of *Isaacs v. Hobbs*, 282 U. S. 734, the Supreme Court used the following language:—

“The title and right to possession of all property owned and possessed by the bankrupt vests in the trustee as of the date of the filing of the petition in bankruptcy, no matter whether situated within or without the district in which the Court sits * * * It follows that the bankruptcy court has exclusive jurisdiction to deal with the property of the bankrupt estate. It may order a sale of real estate lying outside the district. * * * When this jurisdiction has attached, the court's possession cannot be affected by actions brought in other courts. * * * Thus, while valid liens existing at the time of the commencement of a bankruptcy proceeding are preserved, it is solely within the power

of a court of bankruptcy to ascertain their validity and amount and to decree the method of their liquidation. * * * As mortgaged property ordinarily lies within the district in which the bankruptcy court sits, and the mortgagee can consequently be served with its process, the procedure usually followed is for that court to restrain the institution of foreclosure proceedings in any other.”

In the case of the *Reconstruction Finance Corporation v. Chicago Rock Island Pacific Railroad*, decided by the Supreme Court of the United States on April 1, 1935, Co-op. Advance Sheet Page 655 and which involved the validity of Section 77 of the Bankruptcy Act, the Court said:—

“The power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction is, therefore, inherent in a court of bankruptcy, as it is in a duly established court of equity. * * * An injunction may be issued in such circumstances for the purpose of protecting and preserving the jurisdiction of the court ‘until the object of the suit is accomplished and complete justice done between the parties.’ * * * The injunction does not infringe 67 (d), U. S. C. title 11,107 (d). The substance of that provision is that bona fide liens shall not be affected by anything contained in the Bankruptcy Act. The injunction here in no way impairs the lien, or disturbs the preferred rank of the pledgees. It does no more than suspend the enforcement of the lien by a sale of the collateral pending further action. It may be, as suggested, that during the period of restraint the collateral will decline in value; but the same may be said in respect of an injunction against the sale of real estate upon foreclosure of a mortgage; and such an injunction may issue in an ordinary proceeding in bankruptcy.”

The Court below relied entirely upon the case of *Stratton v. New*, 282 U. S. 318, and quotes from that case as follows (Rec. 48):—

“Where a judgment which constitutes a lien on the debtor’s real estate is recovered more than four months prior to the filing of the petition, the bankruptcy court is without jurisdiction to enjoin the prosecution of the creditor’s action, instituted prior to the filing of a petition in bankruptcy, to bring about a judicial sale of the real estate.”

This case, however, presents quite a different situation from that presented in the case at bar. There the judgment creditors’ bill was filed more than four months before the bankruptcy petition. The opinion of the court there says

“February 20, 1928, Alley filed in the same court a judgment creditor’s suit. * * * August 4, 1928, sixteen months after rendition of Alley’s judgment and five and one-half months after the filing of the creditors’ bill the Coal Company filed its voluntary petition in bankruptcy.”

Continuing, the court says:

“Upon these facts the question certified is where creditors have obtained and docketed judgments constituting liens on the real estate of defendant and have instituted a creditors’ suit in a state court to marshal and enforce the liens and sell the real estate subject thereto, does the bankruptcy of defendant occurring more than four months after the institution of the creditors’ suit, oust the state court of jurisdiction, or vest in the court of bankruptcy power to enjoin further proceedings in the state court?”

The court below in the opinion to which reference has been made above by inference at least was of the opinion that the lien of the plaintiffs in the equity suit (if that be eventually established) should date from the rendition of the judgments at law.

The court in its opinion in this case (Rec. 48) says:—

“Here the judgments which constitute the lien were obtained more than four months prior to the bankruptcy proceeding.”

The court in the opinion in the equity case (Rec. 121), says:—

“It is not the purpose of the bill to establish the lien. The lien came into being upon the rendition of the judgment.”

The court in making this finding was relying upon Section 323, Title 24 of the D. C. Code which provides as follows:—

“Every final judgment at common law and every unconditional final decree in equity for the payment of money from the date when the same shall be rendered, * * * shall be a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by such judgment, decree or recognizance, in any lands, tenements, or hereditaments in the District, whether such estates be in possession or be reversions or remainders, vested or contingent but such liens on equitable interests shall be enforced by bill in equity.”

The court seems to have overlooked in this reasoning the fact that the judgment debtor in the law proceedings had no property whatsoever standing in his name and that it required a bill in equity to create that lien.

In such instance this court has held that the lien was created by the filing of the bill.

In the case of *Arlington Brewing Company v. Wyvill*, 35 Appls. D. C. 589, this court said:—

“It is well settled by the decisions of this court that, where a bill is filed by a judgment creditor to subject the equitable estate of the judgment debtor to the satisfaction of the claim, and the judgment creditor asserts only his own right, he acquires an equitable lien as of the date of the filing of his bill and the issuance of process thereon. * * * As was said in *Young vs. Kelly*, 3 App. D. C. 296: ‘It is conceded, and of course it could not successfully be controverted, that by the filing of a bill in equity to enforce a judgment at common law, and by the issue of process thereon, a lien is obtained by the complainant upon the property specifically and sufficiently described in the bill and sought to be reached by it; and this equitable lien continues until the suit is disposed of by decree, dismissal, abatement, or otherwise.’ Where a judgment creditor, therefore, files a bill in equity to subject the equitable estate of the judgment debtor to the satisfaction of his claim, and does so in his own behalf solely, he obtains a prior lien dating from the date of the filing of his bill and the issue of process thereon.”

In the case of *Ohio National Bank v. Berlin*, 26 Appls. D. C. 226, this court said:—

“The filing of the bill necessarily gives the judgment creditor the same right of preference by way of this special lien as is acquired by the levy of an execution upon the legal estate of the judgment debtor. The doctrine of the case cited has frequently been applied in this court.”

The Supreme Court of the United States had a similar situation in *Luhrs v. Hancock*, 181 United States

567, 45 Law. Ed. 1005. In 1886, Hancock conveyed certain real estate to his wife for the consideration of love and affection which was subsequently alleged to be in fraud of his creditors. On March 5, 1892 a judgment was entered against Hancock upon an indebtedness contracted by him in 1883. On March 21, 1892, Mrs. Hancock mortgaged the property. In April, 1892, execution on the judgment was levied upon the premises and the question was whether the judgment had priority to the mortgage. The Court said:—

“The deed from Hancock to his wife was prior to the judgment. The mortgage to Allstatter was subsequent to the judgment, but prior to the levy of the execution, and the latter can only relate to and be supported by the judgment, if the judgment became a lien upon the property. It has been held in some jurisdictions that a judgment against a debtor becomes a lien on land fraudulently conveyed by him. In other jurisdictions it has been held otherwise, and this court has held otherwise. *Miller vs. Sherry*, 2 Wall. 237, 17 L. ed. 827, was a creditors’ bill to set aside fraudulent conveyances, and a question arose as to the effect of the judgment upon land previously conveyed. The court said: ‘The judgment obtained by Mills and Bliss was the elder one, but it was subsequent to the conveyance from Miller to Williams. It is not contended that the judgment was a lien on the premises. The legal title having passed from the judgment debtor before its rendition, by a deed valid as between him and his grantee, it could not have that effect by operation of law.’

“The rule and the reason for it are admirably expressed by Judge Deady in *Re Estes*, 6 Sawy. 467, 3 Fed. Rep. 141, as follows:

‘In my own opinion, the lien of a judgment which is limited by law to the property of or belonging to the judgment debtor at the time of the

docketing is not nor cannot, without doing violence to this language, be held to extend to property previously conveyed by the debtor to another by deed valid and binding between the parties. * * * The operation of the lien of a judgment, being limited by statute to the property then belonging to the judgment debtor, is not a mode prescribed by which a creditor may attack a conveyance fraudulent as to himself, or assert any right as such against the grantor therein. This lien is constructive in its character, and is not the result of a levy or any other act directed against this specific property. It is the creature of the statute, and cannot have effect beyond it.' "

The case cited is not to be passed without placing another part of the lower court's opinion in juxtaposition with the opinion of the Supreme Court.

The lower court says (Rec. 121) in referring to the conveyance of Howenstein to the Corporation, "Such a conveyance is void."

The Supreme Court says in *Luhrs v. Hancock*, *supra*:

"Such a conveyance is not, as has been sometimes supposed, 'utterly void', but it is only so in a qualified sense. Practically it is only voidable and that at the instance of creditors proceeding in the mode prescribed by law, and even then not as against a bona fide purchaser."

In the case of *Miller v. Sherry*, 2 Wall. 237, 17 Law. ed. 827, which has been cited approvingly by the Supreme Court in the above case, a controversy arose as to the competing claims of judgment creditors in respect to real estate fraudulently conveyed by the judgment debtor. The Court held that a judgment obtained against the fraudulent grantor subsequent to his con-

veyance of the property did not create a lien thereon which would be paramount to a subsequent judgment enforced by a creditors' bill.

In *Union National Bank of Chicago v. Lane*, 177 Ill. 171; 52 N. E. 361, Lane, Browne and the Union National Bank of Chicago all recovered judgments against Barker subsequent to a conveyance by Barker of the real estate in question to his wife for the purpose of hindering and delaying creditors. Executions were issued on all the judgments. Lane, however, was the first to file a creditors' bill to set aside the conveyance to Barker's wife as fraudulent. Both Browne and the Bank subsequently filed creditors' bills and the controversy was as to the priority of the liens obtained thereby.

Although the Bank recovered the first judgment, the Court held in favor of Lane and in so holding said:—

“It is the settled law of this State that a judgment is not a lien on real estate which the judgment debtor before the rendition of the judgment had conveyed away to defraud his creditors; the doctrine being that, as between the parties to it, the conveyance is valid and binding, and no interest, legal or equitable, remains in the grantor upon which the lien can rest.”

Other apt cases in line with the above are as follows:—

Yellowstone Mfg. Acceptance Corp. v. Harris,
26 Am. B. R. (N. S.) 689.
Collins v. Welsh, No. 2 Volume 28 Am. B. R.
(N. S.) 279.

The Court below relied upon two cases to support the views expressed by it that the lien came into being upon the rendition of the judgment (Rec. 48).

One of these cases is *Metcalf v. Barker*, 187 U. S. 165, 47 Law. ed. 122. The facts of this case are quite different from the situation to which the court applies them. Those facts were as follows:

Lesser Bros. were adjudicated bankrupt May 12, 1899. Metcalfe Bros., the appellant, judgment creditors of Lesser Bros., commenced their creditors' suit December 17, 1896. The trustee in bankruptcy of Lesser Bros. procured an order from the Court requiring Metcalfe Bros. to show cause why they should not be enjoined from taking any further proceeding under any judgment in their creditors action. The court held that the filing of a judgment creditor's bill and service of process creates a lien in equity on the judgment debtor's equitable assets and that inasmuch as the creditors' bill was filed prior to four months before the adjudication was had, Metcalfe Bros. acquired a lien on the property which was paramount to the claim of the trustee in bankruptcy.

No claim was made in the case cited nor did the court adjudicate upon the question of whether the judgment obtained by Metcalfe Bros. upon which their subsequent creditors' bill was based constituted a lien.

On the contrary, the court expressly decided in *Luhrs v. Hancock* and *Miller v. Sherry*, both *supra*, that a judgment does not create a lien on property fraudulently conveyed by the judgment debtor.

The Court below doubtless misunderstood the meaning of the "decree" that created the lien. The "decree" that created the lien was in the judgment creditors' suit; not the judgments upon which the creditors' suit was based.

In *Clarke v. Larremore*, 188 U. S. 486, 47 Law. ed. 555, appellant recovered a judgment against Kenney and levied an execution thereon in March, 1899 on

certain stock and fixtures. A sheriff's sale was held March 15, 1899. Shortly after the levy of the execution, one Abbett caused to be issued out of the same court a writ of attachment against the property of Kenney and caused it to be levied upon the same stock and fixtures claiming that appellant's judgment was fraudulent and seeking to enjoin the sheriff paying the money over to the appellant. The court decided in favor of the appellant but before the sheriff could pay over the money to him an involuntary petition in bankruptcy was filed against Kenney and an order entered by the District Judge restraining the sheriff from paying the money to appellant and a further order was subsequently entered directing the sheriff to pay the proceeds of the sale over to Kenney's Trustee in Bankruptcy, the appellee. The court held that inasmuch as the judgment and the levy and execution thereon were all had and obtained within four months prior to the adjudication, that the lien thereby created was void under Section 67F of the Bankruptcy Act. In so holding the court said:

“The judgment in favor of petitioner against Kenney was not like that in *Metcalf Bros. vs. Barker*, 187 U. S. 165, one giving effect to a lien theretofore existing, but one which, with the levy of an execution issued thereon, created the lien; and as judgment, execution, and levy were all within four months prior to the filing of the petition in bankruptcy, the lien created thereby became null and void on the adjudication of bankruptcy.”

In the *Clarke-Larremore* case, a lien was created by a levy and execution on specific personal property in the hands of the judgment debtor and no contention would be made here that if a levy had been actually

made under appellee's judgments upon real estate standing in the name of the judgment debtor, namely, Herman R. Howenstein, individually, such levy would not have constituted a lien from the date thereof.

Counsel for the appellees cited to the court below certain cases contended by him to support the proposition that the bankruptcy court had no jurisdiction to enjoin a proceeding in a State court which had been begun and was pending prior to the adjudication. These cases all hold that the Bankruptcy Court will in its discretion refuse to transfer a proceeding pending in a State court at the time of adjudication where, and only where, such proceedings were in the enforcement of a lien created more than four months prior to the adjudication and not invalidated by the provisions of the Bankruptcy Act.

Counsel for the appellee contended in the Objections to the Granting of the Special Appeal that the action of the lower court was discretionary and consequently not subject to review. The argument was that the granting or the withholding of an injunction is a matter of judicial discretion and where the action is based on that doctrine, the appellate court will not review it. A number of cases was cited in support of this contention. The obvious answer is that the lower court did not withhold the injunction as a matter of discretion. It declined as a matter of legal right on the grounds that the liens had been created beyond the four months period.

It is respectfully submitted that the action of the lower court should be reversed and the cause remanded with directions to grant the prayers of the petition of the trustee filed March 18, 1935 (Rec. 32, et seq.).

Respectfully submitted,

H. WINSHIP WHEATLEY,
Attorney for Appellant.

FILED OCT 5 - 1935

Henry V. Strayer

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA

—
No. 6532
—

JOHN A. REILLY, Trustee in Bankruptcy of H. R. How-
ENSTEIN COMPANY, *Appellant.*

v.

ANNA S. SABIN, J. BARRETT CARTER, H. R. HOWENSTEIN
COMPANY, AND LEO N. MCGUIRE, Trustee, *Appellees.*

—
BRIEF FOR APPELLEES.
—

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INDEX.

	Page
Statement of the Case	1
The Question involved	9
Argument	9
Judgment creates Lien upon Equitable Es- tates	10
Fraudulent Conveyances void as to Creditors	14
Judgment Creditor may enforce lien in Equity Court	25
Bankrupt Solvent when lien Acquired.....	34
Conclusion	38

CODE PROVISIONS.

Sect. 323, Title 24, D. C. Code	10
Sect. 11, Title 11, D. C. Code.....	14
Sect. 6470 Va. Code	20
Sect. 2569 R. C. 1919 S. D. Code.....	22

CASES CITED.

Arlington Br'y Co. v. Wyvill, 35 Apps. D. C. 589..	13
In re Berlowe, 7 Fed. (2) 898	15
Biggs v. Campbell, 46 Apps. D. C. 288	13
Blair v. Brailey, 221 Fed. 5	26
Bride v. Baker, 37 Apps. D. C. 231	10
In re Brinn, 262 Fed. 527	28
Brown Shoe Co. v. Wynn, 281 Fed. 807	29
Connell v. Walker, 291 U. S. 1	33
Elkay Reflector Corp. v. Savoy, Inc., 57 Fed. (2) 161	34
First National Bank v. Maxwell, 123 Cal. 360	22
Fridley v. Munson, 46 S. D. 532	22

	Page
Hall v. Hall, 230 Ky. 351	22
Hillyer v. LeRoy, 179 N. Y. 369	17
Liberty Natl. Bk. v. Bear, 265 U. S. 365.....	36
Luhrs v. Hancock, 181 U. S. 567.....	23
Martin v. Oliver, 260 Fed. 89	36
In re Marts, 38 F. (2) 283	27
Mason Co. v. Pout, 227 N. W. 392	21
Metcalf Bros. v. Barker, 187 U. S. 165	25
Natl. Bank of the Republic v. Hobbs, 118 F. 626 ..	32
Northwestern Pulp & Power Co. v. Finnish Luth. Book Concern, 51 F. (2) 340.....	30
Simpson v. Van Etten, 108 F. 199.....	36
In re Schwab Printing Co., 59 F. (2) 726	34
Stratton v. New, 282 U. S. 318	26
Taubel-Scott-Kitzmuller Co. v. Fox, 264 U. S. 426	36
Tucker v. Foster, 154 Va. 182	18
Union Natl. Bank of Chicago v. Lane, 177 Ill. 171	23
In re Walker, 18 F. (2) 455	35
Whitney v. Barrett, 28 F. (2) 760.....	29

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BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

The record in this case shows that Herman R. How-
enstein, the subject of this inquiry, has for many years
been a well known business man, whose principal busi-
ness was that of building and operating real estate in
Washington. (R. 116)

He was also reputed to be worth a million and a half dollars.

Said Howenstein told several persons within a short period of time before the institution of this creditor's bill that he was worth a million and a quarter dollars. (R. 117)

On the 2nd day of May, 1927, (R. 65) Howenstein assumed a note which came into the possession of appellee Anna S. Sabin in due course of business, which he did not pay, and did not pay interest on the same after the 25th day of November, 1932. (R. 66)

Suit was instituted on this obligation, and judgment obtained on the 21st day of October, 1933. (R. 66)

Execution was issued on this judgment on the 5th day of October, 1934, (R. 67) and was returned "nulla bona" (R. 67).

Obligation was likewise assumed by the said Howenstein on another note which came into the possession of Anna S. Sabin in due course of business, was not paid, suit was filed, and judgment entered in favor of the said appellee Anna S. Sabin against the said Howenstein, on the 27th day of February, 1934. (R. 67)

Execution was issued on this judgment on the 5th day of October, 1934, and was returned "nulla bona". (R. 67)

On November 10, 1934, appellee Sabin filed a judgment creditor's bill. (R. 62)

Appellee J. Barrett Carter had obtained two judgments against Howenstein in September 1933, which were executed on November 15, 1934, and both executions returned "nulla bona". (R. 77)

Carter joined in by intervention with plaintiff in her creditor's bill. (R. 75) In this judgment creditors' bill, appellee charged, among other things (R. 67-70)

that Herman R. Howenstein became engaged in the real estate and building business in Washington in 1898, and that in December 1902, he incorporated the business under the name of H. R. Howenstein Co.

This corporation incorporated under the laws of the District of Columbia, had 1,000 shares of stock, that Herman H. Howenstein had 996 shares of this stock in his own name up to 1930 or 1931, and one E. Catesby Rowzee, who was employed by Howenstein, had 4 shares in his name. That Howenstein then and at that time transferred the 996 shares of this stock to his wife without any consideration, leaving no stock in his own name, although he continued to act as president until 1933, when he reorganized his company, naming Rowzee as president and treasurer, and he, Howenstein, as secretary. His wife was named as vice-president. That the transfer of all of his real estate and assets belonging to him was made to the corporation without consideration and for the purpose of hindering, delaying and defrauding his creditors, including appellees in this case.

After the filing of the creditor's bill, Howenstein sold or caused to be sold, certain promissory notes aggregating the face value of over \$6,000. (R. 115)

Howenstein, after the suits were instituted, caused dividends of about \$10,000 on the stock of the said Howenstein Company to be paid to him, or his wife, when the same had not been earned. (R. 116)

The record further shows that such sums of money were taken out of the Howenstein Company for the sole purpose of hindering and defrauding the appellees Sabin and Carter and other creditors similarly situated and to keep such creditors from collecting the amounts due them on the obligations assumed by said Herman R. Howenstein. (R. 116)

Howenstein, after these obligations, which resulted in these judgments, were assumed by him, and on or about the 6th day of July, 1929, transferred all of his real estate holdings in the District of Columbia, consisting of something over a hundred pieces of real estate, to a corporation known as The H. R. Howenstein Co. (R. 94)

Howenstein then transferred nine hundred ninety-six shares, of a total of 1000 shares, of the capital stock of said corporation, on or about the 1st day of July, 1931, (R. 103) to his wife Katherine M. Howenstein, without any consideration whatever for said transfer.

The other four shares were then transferred to, or written in the name of E. Catesby Rowzee, an employee and confidential man of Herman R. Howenstein. (R. 106)

In Howenstein's answer to the judgment creditor's bill he admitted the transfer of this property was without consideration, (R. 94) and that the transfer of the stock was without consideration. (R. 92)

But the transfer of the real estate he undertook to defend upon the ground that it had always been the corporation's property, but was held in his name. (R. 94)

As to the transfer of the stock, he made no explanation whatever. (R. 92)

When appellee discovered that dividends of \$10,000 had been declared and paid to Howenstein and his wife out of the treasury of this corporation after these judgments were entered against Howenstein (R. 116) and when none of the funds had been earned, she, through her counsel, filed a motion for the appointment of a receiver (R. 115) in which appellee set forth the facts as stated above, and asked that the

Court appoint some one to take over the real estate and hold it pending the suit, and to take over this 996 shares of stock.

After the motion for the appointment of a receiver was filed in the Equity Cause (R. 115) Mrs. Howenstein transferred back to her husband, Herman R. Howenstein the 996 shares of the capital stock of Howenstein Co. (R. 122)

Under the present rules of Court, it was necessary to file this motion together with points and authorities supporting it, giving opposing counsel, Messrs. Tobriner, Graham, Brez & Tobriner, counsel for Howenstein, his wife, Rowzee and Howenstein Co., an opportunity to answer in five days, with their points and authorities in opposition thereto.

This motion for the appointment of a receiver was filed by the appellee on February 11, 1935. (R. 115)

Attached to the motion was an affidavit of appellee's husband, Ralph L. Sabin, advising the Court of the sale of these notes of the face value of \$6,000 and questioning the disposition of the proceeds. (R. 116) And, that since the judgments were obtained, Howenstein directed his wife, and Rowzee, to pass resolutions declaring dividends of \$10,000, (R. 116) which was for the purpose of defrauding, hindering and delaying his creditors, including the appellees, in the collection of their judgments; and that while Howenstein was known as a man of large means and had repeatedly stated that he was worth a million and a quarter, his counsel now advised that he could not pay his creditors more than five cents on the dollar. (R. 117)

The affidavit further alleges that of the total capital stock of \$100,000, E. Catesby Rowzee owned four shares, or held title to four shares (R. 118) and Kath-

erine M. Howenstein had in her name on the books of the company 996 shares, making up the total of 1000 shares.

An answer was filed opposing the motion, and notice was given to counsel on both sides that the motion for the appointment of a receiver would be heard on the 25th of February, 1935, (R. 119) at 10 o'clock.

On Saturday, the 23rd day of February, 1935, counsel representing Howenstein, his wife, and the company, went before the justice presiding on Saturday, February 23, 1935, who was not the Motion Justice, and presented a petition for voluntary bankruptcy for Howenstein Co. (R. 119).

The hearing was thereupon continued until March 4, 1935, (R. 119) at which time the court was advised that a voluntary petition in bankruptcy had been filed on behalf of Howenstein individually through the same counsel representing Howenstein, Howenstein & Co., and E. Catesby Rowzee. (R. 122)

In the voluntary petition of Howenstein Co. (R. 2) signed by E. Catesby Rowzee, President, and by Tobriner, Graham, Brez & Tobriner, as solicitors, they do not claim *insolvency of the corporation*, but the petition shows a resolution passed by Howenstein Co. on the 19th of February 1933, authorizing the filing of the petition and the retention of the firm of Tobriner, Graham, Brez & Tobriner as attorneys. (R. 2)

The schedule of properties was filed on March 2, 1935. (R. 4 to 17 incl.) This statement shows—

Taxes due (R. 4)	\$7,700.00
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(See analysis of schedules R. 124-5).

Unsecured obligations of (R. 9).....	\$8,900.00
being \$2,700 due Riggs Bank	
2,400 due Walker	
3,800 due Second National Bank	
for which the Second	
National Bank held	
security.	
That no demands were made by the	
banks for the payment of the balance	
due them since it was curtailed and was	
in good condition. (R. 124)	
The real estate as set forth by the	
schedule was admittedly worth (R. 21).	608,238.75
Promissory notes receivable secured on	
real estate in the District of Columbia	
(R. 24)	86,322.40
Obligations due the corporation (R. 26)	
on open account	11,775.46
Deposits in bank	3,200.87
Real estate notes deposited in bank (R.	
5):	
	\$41,094.41
Against obligations (R. 5)	
amounting to	24,516.41
	16,578.00
Total encumbrances against real prop-	
erty (R. 21)	\$534,100.00

That under the allegations of the bill and the answer of Howenstein Co., Herman R. Howenstein, E. Catesby Rowzee and Katherine M. Howenstein, filed in appellee's equity suit on December, 1934, they allege the ownership of 996 shares in Katherine M. Howenstein, and 4 shares in E. Catesby Rowzee. (R. 125)

That under the laws of the District of Columbia, which require three directors, all of whom must be stockholders, any acts of the corporation would be void as non-compliance with the laws of the District of Columbia. (R. 125)

In the answer of the bankrupt corporation (R. 134) it is claimed that the corporation had the right to file a voluntary petition "even if solvent". The bankrupt failed, however, to answer the allegations in the petition to vacate, (R. 125) to the effect that the corporation had only two stockholders for several years, and the corporation could not function under the laws of the District of Columbia.

The bankrupt's answer in that respect was that it was "not required to answer same." (R. 137)

Appellee filed a petition and motion in the bankruptcy proceeding challenging the sufficiency and validity of the said bankruptcy petition and proceedings, and sought to vacate the order adjudicating and to set aside the bankruptcy proceedings (R. 123).

A demurrer was filed to this petition and motion, which was overruled by the trial justice (R. 47). This is not appealed from.

Thereafter the trustee in bankruptcy filed a petition to sell free of incumbrance certain real estate which was included in the equity proceeding and was made "lis pendens" by the equity proceeding.

The lower court overruled his motion to transfer said property to the bankruptcy court and to authorize such sale. (R. 48.)

And the court also refused to restrain appellees from proceeding with their creditor's bill. (R. 49). This appeal is from these two orders.

THE QUESTION INVOLVED.

The question involved in this appeal is whether the liens acquired by appellees Sabin and Carter attach from the date the judgments were rendered, or from the date of filing of the judgment creditor's bill.

ARGUMENT.

The appellant concedes that if appellees acquired their liens as of the date of the judgments, then the ruling of the lower court is correct.

Appellant contends, however, that the appellees Sabin and Carter acquired their liens on the date of filing of the judgment creditor's bill, namely, November 10, 1934, and that, therefore, said liens are void as coming within Section 67f of the Bankruptcy Act.

On page 2 of appellant's brief, we find his position stated as follows:

"The lien claims of Mrs. Sabin and Mr. Carter grow out of a judgment creditors' bill filed in the Court below November 10, 1934."

Our position is:—

A. That the liens acquired by appellees Sabin and Carter attach from the date the judgments were rendered as to the real property, and on the date execution issued as to the personal property.

B. Since the said liens were acquired more than four months prior to the bankruptcy proceedings, and the judgment creditors' bill was filed before the bankruptcy petition was filed, then said liens are not invalidated by Section 67f of the Bankruptcy Act, and the Bankruptcy Court is without power to enjoin the prosecution of the judgment creditors' bill in the "Equity Court".

Judgment Creates Lien Upon Equitable Estates.

It will be seen from the record (p. 70) that appellee Sabin has enumerated in her creditors' bill certain real estate, (including that which is in controversy herein) which real estate she alleges is owned by the judgment debtor Herman R. Howenstein, and "is being held for him in the name of the defendant corporation, H. R. Howenstein Co." for the purpose of defrauding and hindering his creditors. Obviously, according to this allegation the judgment debtor Howenstein had equitable title and an equitable estate in this real and personal property; legal title to the same merely being held for him by the R. H. Howenstein Co. This equitable interest of the judgment debtor Howenstein in said property clearly comes within the provisions of Section 323, Title 24, of the D. C. Code, which provides that:

"Every final judgment at common law * * * shall be a lien on all the freehold and leasehold estates, legal and *equitable*, of the defendants bound by such judgment. * * *"

It is, therefore, plain that the judgments acquired by the appellees Sabin and Carter became liens *upon whatever equitable estate* the judgment debtor Howenstein has in said property, *from the date said judgments were rendered.*

We find that the case of

Bride v. Baker,
37 Appeals D. C., 231,

decided May 1, 1911, directly supports our contention herein. It appears in that case that the appellant, C.

T. Bride, filed a bill in equity to set aside a marshal's sale and deed. It further appears that on February 28, 1903, lots 4 and 5 in square 882 situate in the District of Columbia, were conveyed to one James M. Gassaway, the deed containing a covenant of adverse possession by the grantor for more than 20 years. The appellant, C. T. Bride, however, was the real purchaser and Gassaway merely acted as his agent or trustee. This deed to Gassaway was immediately recorded. Subsequently, on December 7, 1903, Gassaway conveyed both lots to Bride and this deed was not recorded until July 24, 1906.

On September 4, 1904, while the record title was still in the name of Gassaway, he, acting for Bride, by proceeding in his own name (Gassaway) filed a bill seeking to have the title to said lots 4 and 5 decreed good by adverse possession. On March 8, 1905, one Martha H. Mayse filed a similar bill as to part of lot 4. Gassaway thereupon entered his case dismissed as to lot 4. It appears that Mayse made Gassaway, who was title holder of record, defendant in her bill, and that after a hearing on the same, on May 29, 1906, a decree was entered in favor of said Mayse, in which she was authorized to recover against the defendant Gassaway the costs of her suit. This court in holding that said judgment for costs *became a lien upon the equitable interest of Bride in the real estate which was held for him in the name of Gassaway said:*

“Mr. Bride, in his bill, admits responsibility for the payment of those costs. Regardless of his admission, there can be no question as to his liability under the facts disclosed. He was the real, Gassaway the nominal, defendant. Having full knowledge of all that had been done, Mr. Bride nevertheless neglected to pay the costs he should

have paid, merely recording his deed from his agent and trustee, Gassaway, two days prior to said sale by the marshal. * * * If Mr. Bride is now liable for the costs of the Mayse suit, and he admits and we have said that he is, *he was equally liable when the judgment for costs was entered; and that judgment under Section 1214 of the Code, became a lien upon whatever equitable interest he held in said Lot 5.*" (Italics ours)

It is not necessary, as appellant claims, in order for a lien to be effective that the property stand in the name of the judgment debtor; for if this be true, then the word "equitable" in Section 323, Title 24 of the Code, *supra*, would be superfluous.

Moreover, if legal title to the property stands in the name of the judgment debtor, then a creditor's bill, as provided for by said section of the Code, is not necessary, since all that would be necessary would be legal execution on the judgments.

The very purpose of Section 323, Title 24 of the D. C. Code, *supra*, is to provide for such a case as the instant one, where the legal title to the property is outstanding in another, and it is the *equitable interest* of the judgment debtor which must be reached. In such case, the Code specifically provides that a preexisting lien on an equitable interest "shall be enforced by bill in equity." The word "such" must be read to refer back to the lien created by "final judgment at common law." This, then, is a "legal" lien as distinguished from an "equitable" lien, and is the lien which appellees acquired upon rendition of their judgments.

On the other hand, the lien contended for by appellant is an equitable lien to enforce the lien created by the judgment, and in accordance with the doctrine stated in

Arlington Brewery Co. v. Wyvill,
35 Apps. D. C. 589,

such a lien is obtained upon the filing of a judgment creditor's bill. In other words, when we filed our judgment creditor's bill, we established an equitable lien supporting our *pre-existing lien in law*. (Italics ours.)

An interesting case in this jurisdiction interpreting Section 323, Title 24, of the D. C. Code (formerly Section 1214) and showing the effect of a judgment upon an equitable interest in real estate is that of

Biggs v. Campbell,
46 App. D. C. 288,

decided April 2, 1917. In that case Mr. Justice Robb in delivering the opinion of the Court said at page 291:

“* * * By said section 1214, final judgments and decrees are made liens upon equitable interests in real estate, the only requirement of the statute being that ‘such liens on equitable interests shall be enforced by bill in equity.’ The ground of jurisdiction now is that of a lien or charge arising by virtue of the prior judgment, and not of an equity to enforce satisfaction of such judgment by means of an equitable execution. In other words, *the bill is not filed now with a view to create an interest, but merely to enforce an existing interest*. The provision that such interest shall be enforced by bill in equity was merely because the rights of the interested parties could be better protected in such a proceeding. The reason for an allegation as to the issuance of an execution under the old practice was that the judgment creditor was bound to put himself in the same position as if the estate were legal, because the action of the court converted the estate, ‘so as to make it subject to

an execution, as if it were legal.' Freedman's Sav. & T. Co. v. Earle, 110 U. S. 710, 28 L. ed. 301, 4 Sup. Ct. Rep. 226. But the Code put an end to the distinction between legal and equitable titles and subjected the interest of the judgment debtor, whether *legal* or *equitable*, to the satisfaction of the judgment. Counsel, we think, have overlooked the difference between an original suit in equity to determine a controversy between the parties and a suit based upon this section of the Code, to satisfy a prior judgment or decree." (Italics ours.)

It is, therefore, clear from the above that under the allegations in the bill of complaint we have obtained a lien upon the equitable interest of the judgment debtor Howenstein in the real estate involved herein by virtue of Section 323, Title 24 of the D. C. Code, and it is also clear that our bill, in the language of this Court in the Biggs case, *supra*, "is not filed now with a view to *create an interest*, but merely to enforce an *existing interest*."

"Fraudulent Conveyance Void as to Creditors."

Whatever the law as to fraudulent conveyances may be in other jurisdictions, or whatever the law may have been in this jurisdiction prior to the adoption of the Code, any doubts are now settled by Section 11, Title 11 of the D. C. Code, providing as follows:

"Intent to defraud creditors.—Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands or rents and profits issuing from the same, or in goods or things in action, and every charge upon the same, and every bond or other evidence of debt given, or judgment or decree suffered, with the intent to hinder, delay,

or defraud creditors or other persons having just claims or demands of their lawful suits, damages, or demands, shall be void as against the persons so hindered, delayed, or defrauded: Provided, That nothing herein shall be construed to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor: Provided further. That the question of fraudulent intent shall be deemed a question of fact and not of law.”

The record in the case at bar shows (R. 66) that in 1926 and 1927 (R. 65) the judgment debtor Howenstein became indebted to the appellee Sabin, and that in order to hinder, delay and defraud this appellee, he (R. 70) “conveyed certain real property to the defendant corporation H. R. Howenstein Company without receiving any valuable or other consideration therefor, in July, 1929. The bill of complaint also sets forth a complete list of the property so conveyed (R. 70-71) and includes the property in controversy herein.

The question here was considered and decided in the case of

In re Berlowe,
7 Fed. (2d) 898,

decided May 10, 1925, by the District Court of New Jersey. The trustee in bankruptcy in that case, filed a motion as did the trustee in the instant case, to restrain the judgment creditor from proceeding with a suit in chancery; the claim of the trustee in the Berlowe case, as that of the trustee in the case at bar, being “that the only lien which can be asserted in the premises is the lien created by the commencement of

the suit in chancery, and that the institution of such suit *being within four months next preceding the bankruptcy adjudication*, under the provisions of Section 67(f) of the Bankruptcy Act, secures for Taylor (judgment creditor) no advantages whatever." In that case, as in the case at bar, the judgment creditor sought, in a court of chancery, to secure "the setting aside of an alleged fraudulent conveyance of certain Newark property made by the said bankrupt." It also appears in the Berlowe case, as in the instant one, that the judgments were secured several months before the adjudication in bankruptcy and that the creditor's bill was filed *within* the four month period. We find the court in that case, in supporting our contention, saying as follows:

"To me it appears that *the securing of the original judgment and the issuance of execution thereon and levy thereunder* clearly establish Taylor's lien. If the property in question had remained in Berlowe's name at the time of the levy, no question could have possibly arisen against the validity of the sheriff's levy, so far as the element of time is concerned, and the mere fact that Berlowe had conveyed his real estate to another party, *cannot invalidate that lien if the conveyance shall eventually be proved to have been fraudulent*; the compelling fact being that the levy of the sheriff attached to anything and everything that Berlowe owned or to which he was entitled in the real and personal property therein named. True, there stood in the way of further procedure under the execution the fact of the conveyance of Berlowe; but that conveyance Taylor questions, and has therefore brought suit in Chancery. *He has already done everything possible to realize under his judgment and execution*, and the existing conditions, as I view them, made necessary the insti-

tution of the Chancery suit, *not in order to create a lien against said real estate, but to enforce a lien already obtained more than four months before Berlowe decided to avail himself of the Bankruptcy Act.*

In my opinion, the levy of the sheriff was the last move in the creation of a legal lien, and this fact makes inapplicable such cases as have been cited and deal with equitable liens." (Italics ours.)

The United States District Court then proceeds to approve and adopt the doctrine of the leading case of

Hillyer v. Le Roy
179 N. Y. 369,

and continues as follows:

"It was observed in the opinion in Metcalf v. Barker, and the observation may be quoted, pertinently to the present case, that 'a judgment or decree in enforcement of an otherwise valid pre-existing lien is not the judgment denounced by the statute, which is plainly confined to judgments creating liens'. The plaintiffs' judgment upon the indebtedness of Le Roy & Son to them was recovered, and docketed, considerably more than four months prior to the filing of the petition in bankruptcy. The effect was to impress upon the real estate of the judgment debtors a lien; not only as to such which was then actually held by them, but as to any that had been transferred by them in fraud of their creditors. That is a proposition which is too firmly settled by the decisions of the courts of this state to be now questioned. *The property of a debtor, which has been transferred by him in fraud of creditors, still remains, as to them, the debtor's property and the lien of the*

creditor's judgment attaches to the real estate. The judgment creditor may enforce his judgment by a sale of the land under execution; or he may bring an action to remove the obstruction caused by the debtor's fraudulent act and proceed to enforce his judgment by a sale of the land, unembarrassed by the cloud of the transfer. (Citing cases) I assume that this doctrine would receive the assent of the federal court; so far as applicable to cases arising within the state. Bucher v. Cheshire R. R. Co., 125 U. S. 555, 583. The situation, upon the recovery by the plaintiffs of their judgment against Le Roy & Son, was one where they could elect to stand upon their lien and, summarily, sell the lands upon execution, which their debtors had fraudulently conveyed away; or where, proceeding more cautiously, they might invoke the aid of a court of equity in compelling the satisfaction of their debt. They elected to bring the present action to clear away the obstruction, interposed to the collection of their original judgment through the previous transfers, and they have accomplished their purpose through the present judgment." (Italics ours)

And in the recent case of

Tucker v. Foster,
154 Va. 182, 152 S. E. 376,

decided by the Supreme Court of Appeals of Virginia on March 20, 1930, it appears that one Mrs. M. A. Tucker instituted a suit in chancery on March 30, 1925, against the defendants C. A. Foster, his wife, E. F. Foster and others, the object of said suit being to set aside three deeds from said C. A. Foster to his wife and the other defendants. It further appears that the plaintiff, Mrs. M. A. Tucker obtained her judgment against C. A. Foster in the March term of Court, 1924,

upon a debt which was contracted in November, 1920. The real estate was conveyed away by Mr. Foster before judgment was rendered and before the suit for judgment was filed. On April 22, 1925, *or less than one month after the said bill in chancery was filed*, said C. A. Foster filed his voluntary petition in bankruptcy.

The question arose in that case, as in the case at bar, whether or not the plaintiff acquired her liens as of the date the judgments were rendered. If she acquired them at that time then the state court had a right to proceed with her bill in equity, but on the other hand if she acquired her liens when the bill in equity was filed then the trustee in bankruptcy of said C. A. Foster could restrain her from proceeding in the equity court.

It further appears that the Code of Laws of Virginia has a provision similar to our Section 323, Title 24, D. C. Code, *supra*, which Code section was material to the decision rendered by the Virginia Court, said Code section being Section 6470 of the Virginia Code and reading as follows:

“Every judgment for money rendered in this State, other than by confession in vacation, shall be a lien on all the real estate of or to which the defendant in such judgment is or becomes possessed or entitled, at or after the date of such judgment. * * *”

The Virginia Court in holding that *the plaintiff acquired her lien upon the date of the rendition of the judgment*, said:

“If the deed from C. A. Foster to J. H. Foster be fraudulent and void, as in the bill alleged, the judgments of Mrs. M. A. Tucker and of Homie P. Connor and L. L. Connor *are liens on the land therein conveyed in the hands of J. H. Foster*

from the times at which those judgments were rendered, respectively, and not merely from the time of the institution of the suit and the filing of their petitions, respectively.

“When a judgment has been rendered and duly docketed, the effect thereof is to impose a lien both upon the real estate then held by the judgment debtor *and also upon that he may have theretofore conveyed away in defraud of such judgment creditors after his debt was contracted and before judgment rendered*, subject of course in the latter case to the superior equities of bona fide purchasers for value and without notice. Section 6470 and 6471 Code of Virginia. * * *

“Bringing a suit by a judgment creditor to set aside as fraudulent a deed executed and recorded prior to the time the judgment was rendered, does not postpone the lien of the judgment to the time of the bringing of the suit, or operate as an abandonment or waiver of the existing lien of the judgment against the property in the hands of the fraudulent grantee. Section 5186, Code of Virginia, 1919, which gives a general creditor the same right to sue to set aside a fraudulent conveyance that a judgment creditor would have after obtaining judgment and gives the complainant a lien on the property in the hands of the fraudulent grantee in the bill mentioned from the time of bringing of his suit and a petitioning creditor a lien from the time of filing his petition, *has no application to a suit brought by a judgment creditor or a petition filed by a judgment creditor*. It adds nothing to and subtracts nothing from the rights of a judgment creditor either as to the existence of his lien, the time from which it attaches, its order of priority, or the right to bring a suit to set aside the fraudulent conveyance.

“In considering this demurrer the deed to J. H. Foster must be taken to be fraudulent, as in the bill alleged. The appellants, by virtue of their

several judgments, have liens on the land therein conveyed which attached more than four months prior to the adjudication of C. A. Foster a bankrupt, and are not within the bankruptcy act; and the right of appellants to maintain a suit to have the property in the hands of the fraudulent grantee subject to the satisfaction of their judgment liens has not passed to or become vested in the trustee in bankruptcy. Nor does the bankruptcy proceedings in and of itself oust the state court of its jurisdiction and power to proceed with this suit in which it had the acquired jurisdiction both of the subject matter and the parties thereto before C. A. Foster filed his petition in bankruptcy.” (Italics ours)

And in the case of

Mason Co. v. Poust,
227 N. W. 392,

decided by the Supreme Court of Wisconsin, on November 5, 1929, it appears that the Wisconsin Code contains a provision similar to ours as follows:

“Where a conveyance or obligation is fraudulent as to a creditor, such creditor * * * may, * * * disregard the conveyance and attach or levy execution upon the property conveyed.”

The Wisconsin Court in interpreting this section of the Code said:

“In view of that section, when a debtor has conveyed land by deed which is fraudulent and void as to creditors, a judgment creditor can obtain a lien on such land by issuing an execution and causing a levy upon the land thereunder to be made, *in which case equity jurisdiction may be used to remove the impediment, consisting of the fraudulent transfer,* * * *” (Italics ours)

And to like effect see

First National Bank v. Maxwell,
123 Cal. 360-361,

decided January 21, 1899, wherein the Court said:

“If it be true, as the authorities clearly hold, that so far as it is necessary for the protection of creditors the title and ownership remains in the fraudulent grantor, and that a sale under execution will pass the legal title to the purchaser, *it must logically follow that a judgment duly docketed becomes a lien on the real estate so fraudulently conveyed.*” (Italics ours)

And in the case of

Hall v. Hall,
230 Ky. 351,

decided June 21, 1929, it appears that the Kentucky statute also provides that any conveyances made to defraud creditors are void. It further appears that the lower court found that a certain conveyance was fraudulent but refused to subject the property, which was so conveyed, to the judgment of the plaintiff. The appellate court in reversing the lower court said:

“He did err, however, in refusing to subject this land to the payment of Nettie Hall’s judgment. These sales were void as to her under Sec. 2126, Kentucky Statutes. She had a right to be adjudged a lien on this land under Sections 1906 and 1907a Ky. Stat.”

And to the same effect see the case of

Fridley v. Munson,
46 S. D. 532,

decided July 9, 1923. It appears from the Code of South Dakota, Section 2569 R. C. 1919 that a judgment

“shall be a lien *on all the real property*, except the homestead. * * *” The South Dakota Court in interpreting this section in the Fridley case, said:

“The language of this section of the law appears to be broad enough to include what are denominated equitable as well as legal estates * * *.”

Appellant cites two cases in support of his contention that the judgments obtained in the case at bar do not constitute liens upon the equitable interest of the judgment debtor Howenstein in the property fraudulently conveyed by him to the Howenstein Company. Those cases are

Union National Bank of Chicago v. Lane,
177 Ill. 171, and
Luhrs v. Hancock,
181 U. S. 567.

While it is true in the Lane case, *supra*, the court held a judgment was not a lien on real estate which the judgment debtor before the rendition of the judgment had conveyed away in order to defraud his creditors; nevertheless, we find, that when said opinion was rendered in December 21, 1898, there were no statutes in Illinois as in this jurisdiction, providing that a judgment should constitute a lien upon equitable interests of the judgment debtor in real property, or that conveyances made to defraud creditors are *void*. We thus find the Illinois Court in that case saying:

“Nor does the statute provide that the levy of the execution, or the recording of a certificate of such levy, shall give or create a lien. In the levy upon real estate there is no manual seizure or possession of the property, but the liens provided for

by the statute are constructive, and arise only by a compliance with the statute. *The statute has not provided that the recording of a levy in such case shall have any effect whatever.* * * * Conceding the superior diligence of the bank in obtaining its judgment and in levying upon the land in question situated in the same county, how can it be said it thereby acquired the first lien, *in the absence of any statute providing for a lien in such a case?*" (Italics ours)

As stated above, there can be no doubt in this jurisdiction as to the effect of judgments on equitable estates, or the effect of conveyances to defraud creditors, in view of the Code provisions, *supra*, regardless of what the law may be elsewhere. Therefore, the *Lane* case is not applicable.

And the same applies to the *Luhrs* case, *supra*, relied upon by appellant. The Supreme Court of the United States did nothing more than hold in that case, which had come up from the Arizona courts, that homestead property under the Arizona law could not be subject to a fraudulent conveyance from the husband to the wife since such property was not subject to any liens which may be acquired by the creditor of the husband. Moreover, we fail to find any statutes in Arizona when said opinion was rendered similar to our own Code provisions providing that judgments should become liens upon equitable estates or providing that conveyances to defraud creditors shall be *void*.

We believe we have conclusively shown that the appellees Sabin and Carter acquired their liens upon the equitable interest of the judgment debtor Howenstein in the property involved herein, from the dates the judgments were rendered, namely October 21, 1933,

February 27, 1934, and September 19, 1933, respectively.

We most certainly acquired these liens on the date execution on the judgments issued out of the Supreme Court of the District of Columbia, namely on October 5, 1934. It is thus clear that these liens were acquired more than four months prior to the adjudication in bankruptcy which occurred on February 23, 1935 (R. 3).

The judgment creditor's bill (R. 62) was filed on November 10, 1934, and, as we have shown, was filed pursuant to Section 323, Title 24 of the D. C. Code for the purpose of enforcing a valid preexisting lien, *i. e.*, the lien of the judgments.

Judgment Creditor May Enforce Lien in Equity Court.

We shall now show by the authorities that *the filing of a bill in equity* to enforce an otherwise valid preexisting lien is not a judgment or decree denounced by Section 67f of the Bankruptcy Act; and further that if such a bill is filed *prior* to the bankruptcy proceedings then the bankruptcy court is without jurisdiction to enjoin the prosecution of the said creditor's bill or to compel the judgment creditor to assert his lien in the bankruptcy court.

The leading case in this country on this point is that of

Metcalf Bros. v. Barker,
187 U. S. 165, 47 L. Ed. 122,

wherein the question before us was settled in support of our contention. There were several principles involved in that case, but the question of the establishment of our position that a judgment creditor's bill

may be filed at any time before the bankruptcy proceedings to enforce a valid preexisting lien obtained more than four months prior to the bankruptcy proceedings, is distinctly and definitely settled by that decision. We quote from it thus:

“A judgment or decree in enforcement of an otherwise valid preexisting lien is not the judgment denounced by the statute, which is plainly confined to judgments creating liens. If this were not so the date of the acquisition of a lien by attachment or creditor’s bill would be entirely immaterial.”

Another case wherein this decision was followed is that of

Blair v. Brailey,
221 F. 5, (Circuit Court of Appeals,
decided March 1, 1915)

wherein the Court said:

“Where a valid judicial lien or levy has been secured or made four months or more prior to the bankruptcy, proceedings to enforce the same may be prosecuted to the end.”

From the above it will be seen that this appellee established a lien when she secured her judgments. It therefore follows since this lien was established more than four months prior to the adjudication in bankruptcy, and the creditors’ bill was filed before the bankruptcy proceedings that this appellee has a right to prosecute her creditor’s bill, filed to enforce said lien. This was definitely settled by the United States Supreme Court in the case of

Straton v. New,
282 U. S. 318,

wherein the Court held that:

“Where a judgment which constitutes a lien on the debtor’s real estate is recovered more than four months prior to the filing of the petition, the bankruptcy court is without jurisdiction to enjoin the prosecution of the creditor’s action, instituted *prior* to the filing of a petition in bankruptcy, to bring about a judicial sale of the read estate. (Italics ours)

While it is true that in the Straton case the creditor’s bill was filed five and a half months before the petition in bankruptcy, nevertheless, this is not important since all that is necessary according to that decision is that the lien itself be acquired more than four months prior to the bankruptcy proceedings, and that the *bill to enforce such lien be instituted prior* to the filing of the bankruptcy proceedings. It is immaterial whether or not the judgment creditor’s bill itself is filed within four months, or more than four months prior to the bankruptcy. All that is necessary is that the creditor’s bill be filed *prior* to the bankruptcy proceedings to enforce a lien acquired more than four months prior to the bankruptcy, and that by such filing, the equity court assume jurisdiction over the property *prior* to the bankruptcy court. And this is the effect of the decision in the Straton case, *supra*.

This doctrine is well stated in the case of

In re Marts,
38 Fed. (2d) 283, decided by the Dist.
Court of N. J. Feb. 24, 1930,

wherein the Court said:

“It is quite clear that under the bankruptcy law the filing of the petition places all of the property

of the bankrupt in the exclusive control of this court, and with full power and authority to make any and all orders necessary to preserve the assets for the benefit of the bankrupt estate. U. S. Fid. & Guar. Co. v. Bray, 225 U. S. 205.

This authority is subject, however, to the well-established rule of comity of the courts, and 'when a suit in a state or a federal court has been, *prior to the commencement of bankruptcy proceedings*, instituted to enforce a valid lien on the bankrupt's property, which lien is unaffected by the subsequent bankruptcy proceedings, the jurisdiction of such state or federal court is not affected by the bankruptcy proceedings, *and such court, having first obtained jurisdiction over the property subject to the lien, may proceed to final judgment and the enforcement of the lien.* The jurisdiction of the bankruptcy court does not supersede the jurisdiction of such other court, and the plaintiff in such suit cannot be compelled to seek the enforcement of the lien in the bankruptcy court.'" (Italics ours)

And to the same effect see

In re Brinn,
262 F. 527, decided by the District Court
N. D. Georgia on December 17, 1919,

wherein the Court said:

"The state insolvency laws are suspended by the Bankruptcy Law, and the power of the state courts to enforce liens which are invalidated by that law ends with the bankruptcy of the defendant. But the state courts remain courts of concurrent jurisdiction for the enforcement of liens not so invalidated, and in cases in which proceedings for their enforcement are instituted in the state courts *prior to bankruptcy*, the rules of comity between state and federal courts of concurrent

jurisdiction remain of full force. This is established by an unbroken line of decisions of the Supreme Court of the United States.” (Italics ours)

And in the case of

Brown Shoe Company v. Wynn,
281 F. 807, decided by the Circuit Court
of Appeals, 5th Circuit on June 8, 1922,

the Court said:

“That the statutory lien (Code Miss. 1906, Sec. 3079) sought to be enforced by the suit brought in the state court is one which is not avoided by a bankruptcy proceeding instituted against the defendants in such a suit after it was brought was decided by this court in the case of Norris v. Trenholm, 209 Fed. 827, 126 C. C. A. 551. This is not a case of a bankruptcy court passing on an asserted lien on property of the bankrupt which was in his possession when the bankruptcy petition was filed. Prior to the institution of the bankruptcy proceeding the state court’s jurisdiction of the parties to the suit brought therein and of the subject-matter of that suit had attached, and by its process it had acquired possession of the property sought to be subjected to a lien claimed to have existed before that suit was brought. *The state court’s prior acquired jurisdiction* was not destroyed by the bankruptcy proceeding, and its jurisdiction and possession were not subject to be interfered with by the bankruptcy court. Metcalf v. Barker, 187 U. S. 165, 23 Sup. Ct. 67, 47 L. Ed. 122; * * *” (Italics ours)

And again in the case of

Whitney v. Barrett,
28 Fed. (2) 769, the Circuit Court of Ap-
peals, 5th Circuit on October 29, 1928,

in speaking through Circuit Judge Bryan said:

“The plaintiff in the state court was asserting, and attempting to enforce, a lien obtained more than four months prior to the bankruptcy proceedings, and was entitled to proceed in the state court without interference by the bankruptcy court. The jurisdiction of the state court was not lost by the bankruptcy proceedings.”

And in another well considered case, namely

Northwestern Pulp and Paper Co. v.
Finnish Luth Book Concern, et al.,
51 F. (2nd) 340, decided by the Circuit
Court of Appeals, 9th Circuit on July 13,
1931,

it appears that the judgment creditor obtained a judgment against the alleged bankrupt on September 21, 1929, and that the said judgment was entered on the docket of the circuit court on September 23, 1929. In accordance with the law of Oregon the said judgment became a valid lien on the real property of the bankrupt. It further appears that the petition in bankruptcy was filed on August 13, 1930. The Court in determining whether or not an act of bankruptcy was committed said:

“It will be seen that both judgments against the alleged bankrupt were docketed and therefore, according to the law of Oregon, became valid liens, long before the four-month period had commenced to run. Section 2-1601, Oregon Laws, 1930 Compilation. *The two judgments, therefore, can be regarded as governed by the same legal principles, regardless of the dates when subsequent steps, looking to the enforcement of the liens thereunder, were taken.*”

* * * * *

“If the lien is obtained before the determining period has commenced to run, *and enforcement proceedings are instituted within the four-months’ term*, a complete act of bankruptcy has not been committed.

“That both judgments in this case created valid liens at the time the judgments were docketed is admitted by the appellee in its amended petition. Provision for the obtaining of such liens is contained in the Oregon statute, *supra*.

“It next becomes necessary to inquire whether merely permitting, while the debtor is insolvent, a judgment creditor to enforce, *within the four-month period preceding the filing of the petition*, a valid lien docketed many months in the past, constitutes an act of bankruptcy.

“The general principle is thus laid down in Remington on Bankruptcy, section 150, vol. I, p. 199 (3d Ed.): ‘*The mere enforcement, within the four months period, of a lien obtained before the four months period, is valid and unaffected.*’

“The leading case on this subject is that of Metcalf v. Barker, 187 U. S. 165, 174, 23 S. Ct. 67, 71, 47 L. Ed. 122, in which Mr. Chief Justice Fuller enunciated the following doctrine: ‘* * * Where the lien is obtained more than four months prior to the filing of the petition, it is not only not to be deemed to be null and void on adjudication, but its validity is recognized.’

“See, also, Thompson v. Fairbanks, 196 U. S. 516, 525, 25 S. Ct. 306, 49 L. Ed. 577.

“The doctrine laid down in Metcalf v. Barker, has been recognized or approved in later decisions of the United States Supreme Court. In Globe Bank, etc., v. Martin, 236 U. S. 288, 299, 35 S. Ct. 377, 381, 59 L. Ed. 583, Mr. Justice Day said: ‘The difference, having the provisions of the act in view, between the beginning of a proceeding to assert liens that existed more than four months before the filing of the petition in bankruptcy, and

the attempt to create them by attachment and other proceedings within four months, has been recognized in decisions of this court. In *Metcalf v. Barker*, * * * a proceeding to give effect to a prior lien existing more than four months before the filing of the bankruptcy petition was held not within the meaning of section 67f of the bankruptcy act (11 U. S. C. A. Sec. 107, subd. f).'

"See, also, *Taubel, etc., Co. v. Fox*, 264 U. S. 426, 430, 44 S. Ct. 396, 68 L. Ed. 770.

"District and Circuit Courts have followed this principle for the past two decades. In *Colston v. Austin Run Mining Company*, 194 F. 929, 935 (C. C. A. 3), the court said, with reference to a foreign attachment lien created before the commencement of the four-month period: '* * * both reason and the weight of authority compel the conclusion that mere failure, while insolvent, to vacate or discharge the lien within the statutory period of four months, and at least five days before a sale or final disposition of the property affected, does not constitute an act of bankruptcy. Priority is obtained when a lien attaches, and not when it is enforced. The date of the sale is immaterial in this respect; whenever it takes place, it relates back to the date when the lien attached.' " (Italics ours)

And to the same effect see the case of

National Bank of the Republic v. Hobbs,
118 F. 626,

decided August 10, 1901, wherein the Court said:

"It is true, moreover, that if the contention of defendant's counsel that the proceeding here has abated because of the voluntary petition in bankruptcy is true, it follows that the defendant by his own act effectually precludes all relief in the

courts of the United States, and the doors of these courts are effectually closed to creditors who may have occasion to apply to them to enforce judgments against fraudulent transfers by the debtor of his property. However clear the right, however glaring the fraud, it is then competent for a defendant who has made fraudulent conveyances to destroy this valuable power of a court of equity, secured to nonresidents by the constitution of the United States, by merely filing a voluntary petition in bankruptcy. If this power resides in the debtor, he can exercise it at any stage of the case; and, no matter what the court has done, or how far the cause has proceeded, the lawfully acquired jurisdiction must be relinquished, and the plaintiffs, at their own expense, denied the benefit of the litigation commenced and conducted by them."

In another case decided by the Supreme Court of the United States recently, namely,

Connell v. Walker,
291 U. S. 1,

decided January 8, 1934, we find the court saying as follows:

"Bankruptcy proceedings do not merely by virtue of their maintenance, terminate an action already pending in a non-bankruptcy court, to which the bankrupt is a party. * * * This is obviously the case where the suit like the present one is brought by a creditor to set aside a fraudulent conveyance of the bankrupt made more than four months before the petition in bankruptcy."

From the above cases it seems to be well established that where the creditor has obtained a judgment constituting a lien on the real estate of the bankrupt more

than four months prior to the initiation of the bankruptcy proceedings, and, prior to the bankruptcy proceeding, has instituted a creditors' suit to enforce the said lien and sell the real estate subject thereto, the subsequent bankruptcy of the defendant does not oust the state court of jurisdiction, or vest in the court of bankruptcy power to enjoin further proceedings in the state court.

By analogy we find the courts holding that where an attachment before judgment is levied prior to the four months period, then such attachment ripens, after judgment, into a lien, not from the date the judgment takes effect, but from the date of the prior attachment.

Thus, in the case of

Elkay Reflector Corp. v. Savory Inc.
57 Fed. (2d) 161,

decided by the Circuit Court of Appeals, 2nd Circuit, Apr. 4, 1932, we find the court saying:

“Where property has been attached by mesne process, the lien dates from the original levy, irrespective of when the judgment is recovered.”

To the same effect, see

In re Schwab Printing Co.,
59 Fed. (2d) 726.

Bankrupt Solvent When Lien Acquired.

We believe that this question can be disposed of on another ground, namely, that our lien is not voided even if obtained within four months prior to the filing of the petition in bankruptcy since the present petition

in bankruptcy *does not state that the petitioner was insolvent when the liens were obtained*. On the contrary, we have specifically alleged in our petition and motion to vacate the order of the bankruptcy court (R. 124) that the corporation was not insolvent and on that ground should not have been adjudicated a bankrupt. We also find in the answer to this petition and motion to vacate the order of adjudication (R. 134) that the bankrupt claims it had the right to be adjudicated a voluntary bankrupt "even if solvent".

We find this law to be well stated in the case of

In re Walker,
18 Fed. (2d) 455, 456,

decided by the Circuit Court of Appeals, 5th Circuit, Apr. 12, 1927, wherein the Court said:

"The judgment lien which was being enforced by the District Court in equity was not affected by Walker's voluntary petition in bankruptcy, for the reason that Walker was solvent. Under section 67f of the Bankruptcy Act (Comp. St. Sec. 9651), the only valid judgments or liens that are avoided are those obtained within four months prior to the filing of a petition in bankruptcy by or against insolvent debtors. That section does not provide that liens against a solvent debtor shall be void, and it has been decided by the Supreme Court that they remain in full force and effect. *Liberty National Bank v. Bear*, 265 U. S. 365. The obvious reason is that such liens are outside the field of operation of the Bankruptcy Act, just as are valid liens obtained more than four months prior to the bankruptcy upon the property of insolvent debtors. *Metcalf v. Barker*, 187 U. S. 165, *Blair v. Braley*, 221 F. 1; *Martin v. Oliver* (C. C. A.), 260 F. 89. *Appellant was entitled to pursue*

his remedy to the end in the court that first acquired jurisdiction and gave him a lien that was not subject to be interfered with by any subsequent proceeding in the bankrupt court. Wayman v. Southard, 10 Wheat. 1, 6 L. ed. 253; Moran v. Sturges, 154 U. S. 256, 14 S. Ct. 1019, 38 L. ed. 981; Central National Bank v. Stevens, 169 U. S. 432, 18 S. Ct. 403, 42 L. ed. 807.”

(Writ of certiorari to the Supreme Court of the United States denied in this case.)

From the above case it will be seen that we are entitled to proceed to enforce our lien in the court which first secured jurisdiction, namely, the equity court, regardless of whether we obtained our liens before or within the four months period.

To the same effect see the following cases:

Simpson v. Van Etten,
108 Fed. 199.
Martin v. Oliver,
260 Fed. 89.
Taubel-Scott-Kitzmuller Co. v. Fox,
264 U. S. 426.

And in

Liberty National Bank v. Bear,
265 U. S. 365, 68 L. ed. 1057,

the Supreme Court of the United States in discussing the effect of Section 67f on *a lien obtained against a person who was solvent at the time the lien was acquired*, said:

“It applies only to liens obtained in legal proceedings against a person who was ‘insolvent’ when the lien was acquired. If the debtor was then

solvent, the lien is not invalidated *although it was obtained within four months prior to the filing of the petition in bankruptcy.* Taubel-Scott-Kitzmiller Co. v. Fox, 264 U. S. 426, ante, 770, 44 Sup. Ct. Rep. 396. To invalidate the lien *the person challenging it must show that the debtor was insolvent when it was obtained.* (Citing) *Such insolvency must be both alleged and proved.* Stone-Ordeans-Wells Co. v. Mark, *supra*, p. 978.

“In the present case the trustee neither alleged the insolvency of the Beckers at the time the judgment was recovered and became a lien on their properties, nor proved such insolvency. If the admission in their joint answer to the petition filed against the partnership that the company was insolvent, was intended as an admission of their individual insolvency, it was, at the most, an admission of such insolvency on August 6, when the petition in bankruptcy was filed,—a very different thing from insolvency at the time the judgment was recovered, and, in any event, would not have been binding on the bank, which was not then a party to the bankruptcy proceeding.”

* * * *

“And generally, an adjudication in bankruptcy in no way determines whether or not the debtor was insolvent at the time a lien was obtained through legal proceedings against him; there being no presumption arising from the adjudication that he was insolvent for any period before the petition in bankruptcy was filed.

* * * *

“There being neither allegation nor proof by the trustee of the insolvency of the Beckers when the bank recovered its judgment and fastened its liens upon their real estate, the decree of the Circuit Court of Appeals is reversed * * *” (Italics ours.)

CONCLUSION.

In conclusion, it is most respectfully submitted that this is a case where Howenstein is endeavoring in every way possible to avoid the payment of his obligations. When it was found that his counsel could not settle for five cents on the dollar, he then sought to ruin his estate, if possible, by this bankruptcy proceeding. It was filed without any allegation of insolvency. His assets as shown by the schedules filed by him, show that he is worth today a quarter of a million dollars. No benefit therefore can be derived by any person or persons in carrying on the bankruptcy proceedings and in sacrificing all of this property in the bankruptcy court.

Furthermore, it is perfectly obvious that he has sought by this voluntary petition on his own behalf, and on behalf of the corporation, to retain in his name and in his wife's name, as joint tenants, the home which they occupy, and it will be noted with a good deal of interest, I am sure, by the Court, that that piece of property does not appear in the schedules in the bankruptcy proceeding. That is the home property in which they live.

If we are permitted to go on with our equity suit, then the result will be that we will unearth all of the assets of Howenstein and bring them into the equity court for the payment of the obligations due to creditors.

If the estate is administered in bankruptcy, as is desired by appellants, then there will be no way by which appellees could maintain their claim and establish their lien on this property.

It is most respectfully submitted that all of the equities in this case are with the appellees and that the

law is settled and established in favor of the position of the appellees and in support of the findings and opinion of the trial justice who heard this case below.

We very respectfully submit that the orders of the lower court should be affirmed.

Respectfully submitted,

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